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REVIEW OF FURTHER DEVELOPMENTS IN FIELDS WITH WHICH THE SUB-COMMISSION HAS BEEN CONCERNED

Discrimination against HIV-infected people or people with AIDS

Progress report by Mr. Luis Varela Quirós, Special Rapporteur

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INTRODUCTION

A. Background to this report

1. By its resolution 1990/65, entitled "Discrimination against HIV-infected people or people with AIDS" the Commission on Human Rights endorsed the appointment of the Special Rapporteur to undertake a study of the problems and causes of discrimination against HIV-infected people and people with AIDS. This study had been proposed by the Sub-Commission on Prevention of Discrimination and Protection of Minorities in its resolution 1989/17.

2. The Special Rapporteur's preliminary report (E/CN.4/Sub.2/1990/9) outlined some of the main issues to be addressed by the study. Following debate, the Sub-Commission requested that the study explore the beliefs which underline discrimination against particular races, nationalities and persons on grounds of sexual orientation as this discrimination relates to HIV and AIDS.

3. In preparing this progress report the Special Rapporteur has drawn on a number of sources. A most valuable source of information has proved to be the reports and accounts provided by people infected with HIV and people with AIDS, as well as people otherwise affected by the pandemic.

4. In addition, he has made extensive use of data and studies produced or commissioned by a variety of agencies, including the World Health Organization, the United Nations Centre for Human Rights, the Commonwealth Secretariat, and the Centre for Social Development and Humanitarian Affairs at the United Nations Office at Vienna, the conclusions of a number of international expert meetings, and a number of non-governmental organizations, in particular the International Association of Rights and Humanity.

5. Data has also been provided by the Special Rapporteur's questionnaire on AIDS and human rights. Although a full analysis of responses to the questionnaire will not be possible until all responses have been received, a preliminary analysis of the data generated so far has proved to be useful for the purposes of this progress report.

6. Finally, use has been made of a number of published reports and other primary and secondary publications.

7. In producing this progress report, the Special Rapporteur has taken into account resolution 1989/11 of the Commission on Human Rights, as well as the issues and guidelines contained in the International Consultation on HIV/AIDS and Human Rights which was convened by the United Nations Centre for Human Rights in July 1989. In addition, he has drawn upon the deliberations of the Global Expert Meeting, AIDS: A Question of Rights and Humanity, which was convened by the International Association of Rights and Humanity at The Hague in May 1991.

8. The Special Rapporteur has also followed as closely as possible intergovernmental activities, national policies and the work carried out by non-governmental agencies with a view to preventing HIV- and AIDS-related

discrimination. In particular, he is maintaining close contact with the World Health Organization which has provided technical and other support for the drafting of this progress report.

9. The progress report provides an analysis of discrimination associated with the AIDS pandemic, and raises some of the conceptual and legal issues which relate to this discrimination. In addition, it surveys some of the regional, national and local strategies which have been successful in preventing, or countering, discrimination relating to HIV and AIDS. Finally, the author offers preliminary conclusions and recommendations.

10. In the course of producing this report, the Special Rapporteur has noted that discrimination associated with the AIDS pandemic relates not only to discrimination against people infected with HIV and people with AIDS, but also to discrimination against people on the basis of their nationality, race, gender, sexual orientation and occupation or lifestyle, as well as against families, friends, and other people associated with infected people. In addition, the course of the epidemic has been, and will continue to be, shaped by pre-existing discrimination such as, for example, legal, social and economic discrimination against women, which increases their vulnerability to the risk of HIV infection; and the criminalization of homosexuality, which increases the difficulties in reaching homosexuals with AIDS information and education.

11. In view of this, the Special Rapporteur has recommended that the title of the final report be broadened, from "Discrimination against people infected with HIV or people with AIDS" to "Discrimination in the context of HIV and AIDS".

B. Overview of the HIV and AIDS pandemic

1. Epidemiology

12. In the 10 years since the acquired immune deficiency syndrome (AIDS) was first identified, the human immunodeficiency virus (HIV), which causes AIDS, has crossed all geographic boundaries as well as divisions of class, race, religion, age, gender and sexual orientation. It is a truly global epidemic - known as a pandemic - of unprecedented proportions.

13. In the relatively short time that has lapsed since the publication of the preliminary report, there has been a significant increase in the number of reported cases of AIDS. In mid-1990 a cumulative total of approximately 250,000 cases of AIDS had been reported to the World Health Organization Global Programme on AIDS (WHO/GPA). By June 1991 the figure had risen to more than 350,000. Taking into account under-recognition and under-reporting of AIDS, WHO/GPA estimates that the cumulative total number of cases of AIDS worldwide is currently 1.5 million.

14. Moreover, WHO/GPA estimates that between 8 and 10 million adults are infected with HIV, including more than 3 million women. In addition, one million children are estimated to be infected, and this number is expected to increase dramatically over the coming years, as more women become infected and transmit HIV to their infants.

2. Routes of transmission

15. Extensive scientific research has shown that there are only three ways in which HIV can be transmitted:

(i) Through sexual intercourse (anal or vaginal);

(ii) Through contact with infected blood, blood products of human tissue; and

(iii) From mother to child before, during or, possibly, shortly after birth.

16. The extent to which HIV is transmitted by these different modes varies from region to region. In his preliminary report, the author described the epidemiological patterns of HIV infection which have been identified by WHO/GPA on the basis of two factors: (a) the time when HIV was introduced or began to spread extensively and (b) the dominant mode or modes of transmission.

17. Worldwide, it is estimated that sexual intercourse accounts for approximately 80 per cent of the global total of HIV transmission, a proportion which is expected to increase over the coming years.

18. Scientific research indicates that HIV cannot be transmitted through casual contact such as touching, hugging, or through contact with inanimate objects, such as telephones, eating utensils, toilets and so on, which have been touched by infected persons. The virus is not airborne, nor is it spread by mosquitos or any other insect.

3. Means of detection of HIV

19. Following infection with HIV a person develops antibodies to the virus. These antibodies may be detected by a simple blood test. However, there may be a period of between a few weeks and several months following infection before the development of the antibodies (known as the "window period"). It is commonly assumed that this sero-conversion will have taken place within three months, but even prior to the development of antibodies an infected person may transmit the virus. Thus a negative text result is no guarantee that a person is not infected.

20. Several tests have been developed to identify the presence of the virus or antibodies in the blood, and have been commercially available since 1985. There are two main tests in use, the ELISA test (enzyme linked immunosorbent assay), and the Western blot test. The ELISA test is relatively cheap compared to the more expensive Western blot test. It is also quite sensitive - in that it gives rise to few false negatives - but its specificity is less accurate, giving rise to a significant number of false positive results. Thus blood found to be positive using the ELISA test should not be used for transfusion purposes, but is usually retested using the more accurate Western blot or other confirmatory test before an individual is diagnosed as being HIV positive.

4. Progression from HIV infection to AIDS

21. Available data suggest that 50 per cent of people infected with HIV will develop AIDS within 10 years of infection, and that the remaining 50 per cent could also, eventually, develop AIDS. The length of time between developing AIDS and dying can vary according to a number of factors, including age, as well as access to health care, nutrition and appropriate medical treatments.

5. Impact of HIV and AIDS on societies

22. The wide-ranging social impact of the AIDS pandemic suggests that the significance of HIV and AIDS extends beyond their implications for health.

23. WHO/GPA projections suggest that the high case: fatality ratio which characterizes AIDS will have far-reaching demographic consequences. WHO/GPA estimates that there will be between one- half to one million AIDS-related deaths occurring annually during the mid- to late-1990s, with the majority of these deaths concentrated in particular geographic areas. In certain industrialized countries, AIDS is already the leading cause of death among young men and women in cities with high HIV seroprevalence, and in some areas AIDS accounts for almost as many deaths as cancer, accidents, drugs and homicides combined. 1/

24. By the mid-1990s, in some of the developing countries most affected by AIDS, infant mortality is expected to be 4 per cent higher than it would have been in the absence of AIDS. In the late 1990s it is anticipated that AIDS will begin to reverse the improvements in child mortality rates which have been achieved through child survival programmes over the past 20 years. Projections also indicate that over the next few decades, AIDS will be the leading cause of death among young and middle-aged adults in many of these areas. 2/

25. The demographic impact of the pandemic has in turn serious ramifications for local and national economies, as well as the international economy. Considerable research is being undertaken into the economic impact of HIV and AIDS. Available analyses suggest that the economic costs of the pandemic can be classified in four categories. 3/

26. The direct visible costs of the pandemic comprise the costs of health and social care, including personal care, as well as non-personal services such as blood screening, health education, staff training and research.

27. Secondly, there are direct invisible costs, which cover the services provided by the families and friends of people with AIDS, as well as charities and others who provide services at considerable cost to themselves.

28. A third category constitues indirect visible costs, such as lost economic production through morbidity and mortality. An analysis of these costs highlights the breadth of the pandemic's impact. Because the majority of deaths from AIDS are among the most economically productive age group (18-49 years of age), increased AIDS-related mortality will have significant consequences for local and national economies. For example, local food

production systems, and in particular subsistence farming which is highly labour-intensive, are threatened with devastation as a consequence of the pandemic. In turn, this destruction may lead to severe ecological problems. 4/

29. In addition, in certain areas of high HIV prevalence the majority of infections and AIDS-related deaths have been among the well-educated and trained middle class sector of society. As a consequence, these societies are losing a large proportion of their skilled and managerial work force, with the result that the affected economies are being severely weakened.

30. The fourth category, indirect invisible costs, is the most difficult to quantify, but is nonetheless central to any analysis of the impact of the AIDS pandemic. These costs relate to the lower quality of life which results from the pain, fear, incapacity, anxiety, isolation and stigma which are often associated with AIDS. Although further research is required into this aspect of the pandemic's impact, it is clear that a major cause for the escalating indirect invisible cost of the pandemic is the increasing incidence of HIV- and AIDS-related discrimination which may cause, or increase, the pain, anxiety and suffering of people who are infected with HIV and people with AIDS.

31. There are a number of reasons for avoiding, or preventing, HIV- and AIDS-related discrimination, not least in order to promote the fundamental human rights and dignity of individuals affected by HIV and AIDS, and to reduce the indirect, invisible costs of the pandemic. Moreover, as WHO/GPA has consistently argued, there is a clear public health rationale for protecting the human rights and dignity of people infected with HIV and people with AIDS. 5/

I. HIV- AND AIDS-RELATED DISCRIMINATION

A. The nature of HIV- and AIDS-related discrimination

1. Who is discriminated against?

32. An analysis of discrimination associated with the AIDS pandemic reveals that a large number of people are, or may be, subjected to discrimination.

(a) People assumed to be infected

33. In some instances, people have been discriminated against on the basis of their nationality, race, occupation, sexual orientation or lifestyle. Misinformation regarding the origins of the pandemic have led to stigma and blame being wrongly attached to certain geographic regions. Indeed, during the short history of the pandemic, a number of "population groups" have been wrongly identified as being "risk groups".

34. In the early 1980s, prior to the identification of HIV as the etiological agent of AIDS, scientists and other researchers posited that there were four "disease risk groups" - sometimes known as the four H's - Haitians, homosexuals, heroin addicts, and people with haemophilia. Rapid scientific progress led to an early recognition among scientists and others that there is nothing inherent in any population group which places them at risk of infection. Instead, it was shown that risk of infection is limited to those individuals who engage in specific risk behaviours which expose them to HIV.

35. Nevertheless, the notion of "risk groups" has persisted in certain quarters. In some instances, it is assumed that anyone who is a member of a so-called risk group is infected with HIV. These people are often subjected to discrimination on the basis of this irrational assumption.

(b) People infected with HIV

36. In addition, people who are known to be infected have been discriminated against in a variety of ways. In many cases they are subjected to exclusionary and coercive measures and other forms of discrimination because it is wrongly assumed that people who are infected with HIV will infect other people. This assumption is based on a number of fallacies. Firstly, it may be grounded on a misunderstanding of how HIV is, and is not, transmitted. It has been noted above that HIV can be transmitted in only three ways (sexual intercourse, through blood and blood products, and from mother to child). There is no risk of airborne transmission or transmission through casual contact. Nevertheless, people infected with HIV are frequently discriminated against, and stigmatized, because of a persistent misunderstanding of HIV transmission modes, and the groundless assumption that a person can become infected with HIV merely by being in the proximity of an infected person.

37. A second misconception on which discrimination against people infected with HIV may be based is that people who are infected will willfully transmit HIV to others through sexual contact or blood. There is no empirical evidence to justify such an assumption. The vast majority of people who are infected with HIV will behave responsibly, and appropriate counselling will assist them

in this. Indeed, evidence from around the world suggests that many people infected with HIV devise and implement some of the most effective AIDS education programmes.

(c) People with AIDS

38. People with AIDS are also discriminated against in a variety of contexts, to be considered below. Often such discrimination is based on the belief that people with AIDS will die soon and are therefore not worthy of emotional, social or economic investment. Sentencing people with AIDS to "civil death" unnecessarily increases the pain and suffering experienced by many people with AIDS. Moreover, such discrimination serves to deprive societies of the considerable personal, social and economic contribution which is offered by people with AIDS.

(d) Families, friends and carers of people infected with HIV and people with AIDS

39. Families, friends, carers and other associates of people who are infected with HIV or who have AIDS are also vulnerable to discrimination. This is most frequently due to an erroneous understanding of how HIV can, and cannot, be transmitted. In other words, it is assumed that people associating or living with infected persons will themselves have been infected through casual contact with the infected person; and that they will pass this infection on to other people in the community, for example by touching or speaking with them. In spite of the absence of any scientific evidence to support such assumptions, discrimination on this basis continues to occur.

(e) Pre-existing discrimination with consequences for the AIDS pandemic

40. Pre-existing prejudice and discrimination have helped to influence the course of the AIDS pandemic in a number of important ways. Research indicates that a considerable number of people are suffering the consequences of this discrimination, including the following:

(i) Women

41. Certain factors relating to the reproductive role of women and their subordinate position in society make women particularly vulnerable to the risk of HIV infection. WHO/GPA estimates that there are already more than three million women worldwide who are infected with HIV, and projections indicate that this number may double by the end of the 1990s.

42. The subordination of women may vary in degree in different societies, but its nature remains the same. Women lack equal access to education, training, independent incomes, property and legal rights. This affects both their access to knowledge about AIDS and the measures that may be taken to prevent HIV transmission, as well as their ability to protect themselves from infection. 6/

43. Even if women are aware of the risk of HIV transmission and the preventive measures that can be taken, they may, if they play a subordinate role within interpersonal relations, be denied the opportunity of putting

their knowledge into practice. They are expected or assumed to remain submissive in sexual and social matters and, for many women, to assert themselves is to go against their traditional role. The response may be at best mockery or rejection, at worst abuse, violence and abandonment. Lack of independent income and the economic dependence of women on men is liable to reduce their inclination to be assertive. In many instances, women have not been taught the skills required to choose or reject sexual or other relations, and thus they are often unable to protect themselves from the risk of HIV infection.

44. For those women who are infected, or who have AIDS, the resulting discrimination can cause particularly severe problems. A woman with AIDS may be denied medical assistance, rejected by her family and friends, and forced to leave her job and her home. She may be physically abused and then abandoned by her partner. Such stigmatization is not unique to women. However, while men's property and other rights might be protected by law, women's lack of legal status may lead to their being denied equal protection.

(ii) Prostitutes

45. Long-established prejudice and discrimination against prostitutes have also had important consequences for the AIDS pandemic. It will be seen below that discriminatory legislation and practices relating to AIDS are frequently targeted at prostitutes, who are often held responsible for spreading HIV. In this view, clients of prostitutes are held blameless for HIV transmission, despite the fact that the transmission of HIV from one person to another depends on the unsafe behaviours of both persons. The perception of prostitutes as "vectors" of HIV infection is reflected in discriminatory legislation and policies, which in turn lead to increased discrimination against, and ill-treatment of, prostitutes.

46. Many prostitutes attempt to avoid HIV transmission through the use of condoms. However, numerous reports indicate that prostitutes are often prevented from adopting these safe practices by their clients, their "pimps" or by other persons controlling their activities.

47. The criminalization of prostitution in many countries has been shown to deter prostitutes from adopting safe practices which they might otherwise adopt. For example, in one country where it is a criminal offence for prostitutes to solicit clients, possession of condoms can be taken as evidence of soliciting. As a result, many prostitutes in that country are reluctant to carry condoms with them while they are working. In another report, police were said to have destroyed a prostitute's supply of condoms as a way of "warning" her not to practice the illegal activity of prostitution.

(iii) Homosexuals

48. The criminalization of homosexuality is a barrier to effective dissemination of AIDS information and education. Many homosexuals are reluctant to identify themselves as homosexual, for fear of legal or other reprisals, and they are consequently less accessible to AIDS educators and counsellors.

49. In one country, where homosexuality has been a crime punishable by up to five years in prison, following the discovery of AIDS in that country, police arrested and beat up homosexuals. On one occasion, 60 homosexuals were beaten up and interrogated regarding other suspected homosexuals.

50. Actions such as this inhibit information and education regarding HIV prevention. By contrast, in those societies where homosexuality is tolerated by law and society, effective AIDS education programmes have been developed, leading to reductions in the rate of HIV transmission.

2. Forms of discrimination

51. HIV- and AIDS-related discrimination is a multifarious phenomenon, occurring at all levels of society and taking a variety of different forms. People associated with HIV or AIDS have been discriminated against by Governments and other public authorities, by private organizations, by their local communities, and by individual persons.

52. In some instances, actions are taken which are not intended to be discriminatory, but the consequences of which may offend the dignity of or restrict the enjoyment of rights by people associated with HIV.

53. The range of forms of discrimination which can and do occur is vast. An in-depth survey of discrimination will be required before it will be possible to provide a comprehensive typology of HIV- and AIDS-related discrimination. At this stage, however, it is possible to make preliminary observations regarding the nature of discrimination as it occurs at different levels.

(a) Discriminatory legislation

54. In many countries, the response of the national Government to the AIDS pandemic has included the passing of legislation addressing particular aspects of the disease. Research conducted by the WHO Health Legislation Unit indicates that, as of May 1991, some 90 countries had enacted or issued legislation pertaining to HIV or AIDS.

55. In some instances, legislation serves to protect the rights of people infected with HIV, or to strengthen efforts at HIV and AIDS education. Conversely, a number of laws have been passed which discriminate against "population groups" associated with HIV and AIDS, against people infected with HIV and people with AIDS, and against others who are affected by the pandemic.

(i) Mandatory screening of certain population groups

56. For example, in a number of countries, laws have been passed requiring mandatory screening of specified population groups for HIV. In one country, the law provides for HIV testing of pregnant women who are "suspected of belonging to a 'risk group'" or "whose partner belongs to a 'risk group'". More commonly, legislation concerned with HIV screening requires that homosexuals, drug users or prostitutes be tested for HIV.

57. Prostitutes in particular are often singled out in national legislation for mandatory screening. Often the law requires that testing of prostitutes be carried out on a regular (three- or six-monthly) basis. In one country, the Director-General of the Ministry of Health has "proclaimed that persons engaging in prostitution are likely to carry HIV". Such proclamations are likely to perpetuate negative attitudes towards prostitutes, many of whom may be taking the necessary precautions to prevent the spread of HIV. Moreover, it is discriminatory to single out prostitutes and to overlook their clients when discussing risk factors for HIV transmission.

58. In one country, a legislative text is based on the "presumption that male and female prostitutes and intravenous drug addicts are suspected of being infected...Persons who are established or presumed to be diseased, suspected of being disease carriers, suspected carriers, or suspected of being infected...must undergo the necessary examinations. Even if test results are negative, persons who are suspected of being infected must be re-tested at quarterly intervals". 7/

59. The report of the WHO Meeting on Criteria for HIV Screening Programmes, held at Geneva on 20 and 21 May 1987, notes that: "It was the opinion of the participants at the meeting that readily accessible counselling and testing for antibody to HIV, provided on a voluntary basis, are more likely to result in behaviour changes that contribute to the public health goal of reducing spread of HIV than are mandatory screening initiatives...There was also consensus that mandatory screening of targeted populations is less likely than voluntary programmes to reach effectively those persons whose behaviour can be influenced to reduce the risk of infection". 8/

(ii) Supposed safeguards against HIV transmission

60. The law in a province of one country states that a number of safeguards provided for in existing public health legislation should be taken in respect to AIDS. In particular, it states that no infected person, or person who is suspected of being infected, may "engage in any activity that may transmit the disease". This requirement places the onus of preventing HIV transmission exclusively on those people who are already infected. In doing so, it omits reference to the fact that HIV transmission occurs when two persons engage in unsafe behaviour, only one of whom is infected. In addition to being discriminatory, this approach can be harmful to the public health, as it would appear to absolve all uninfected people from the responsibility of avoiding infection.

61. In a small number of cases, legislation has been passed allowing for the isolation or detention of people infected with HIV. In one instance there is a legal provision for persons with AIDS to be "isolated for treatment". In another case, people who are admitted to hospital for a venereal disease (including HIV) may be detained until the appropriate authorities consider that there is no risk that the patient will transmit the disease to others. In one country, physicians are legally empowered to confine confirmed or suspected cases of HIV infection in an infectious diseases clinic by what is called "mandatory hospitalization".

62. Such laws run counter to the view expressed by WHO, that "[t]here is no public health rationale to justify isolation [or] quarantine...based solely on the fact that a person is suspected or known to be HIV-infected". 9/

(iii) International travel

63. Similarly, despite WHO's clearly stated view regarding the lack of utility of screening international travellers, a number of Governments continue to pass or uphold laws which prevent international travellers from entering the country on the basis of their HIV infection.

64. The WHO Consultation on International Travel and HIV Infection, held at Geneva on 2 and 3 March 1987, concluded that:

> "The diversion of resources towards HIV screening of international travellers and away from educational programmes, protection of the blood supply and other measures to prevent parenteral and perinatal transmission, will be difficult to justify in view of the epidemiological, legal, economic, political, cultural and ethical factors mitigating against adoption of such a policy". 10/

65. Yet, despite WHO's recommendation, a number of Governments have passed legislation which allows for the screening of travellers and for the prevention of entry into the country of non-nationals found to be infected. In some cases, entry into the country is refused to those people who are both infected with HIV and deemed to be "liable to infect numerous persons with the virus". Elsewhere, HIV-infected people are entitled to enter a given country only for specific purposes and for limited periods of time.

(iv) Coercive measures

66. There are instances where legal provision is made for coercive measures to be taken against people infected with HIV in specified circumstances. In one case, the law permits group medical examinations, and another provision authorizes "interrogation" of infected persons under certain conditions.

(v) HIV/AIDS as a special or dangerous disease

67. In a number of cases, legislation is based on discriminatory attitudes towards people infected with HIV, and serves to perpetuate stigma and discrimination. For instance, in one country, the law requires annual HIV testing of medical personnel of blood dialysis centres, and twice-yearly tests among patients of these centres. This is based upon an erroneous view of HIV as a "special" disease, which poses a "special" risk to medical personnel. Treating HIV in this manner is not in keeping with the guidelines for HIV infection control in health-care settings issued by WHO/GPA, which suggest that medical treatment of people with HIV infection does not require "special" protection: the guidelines state that "adherence to guidelines for the prevention of transmission of blood-borne agents, such as hepatitis B virus, is more than sufficient for preventing HIV transmission". 11/

68. The view of HIV as a disease requiring special legislative and other measures underlies the categorization of HIV as a particularly threatening or dangerous disease. In one country, legislation states that HIV is to be included in the "list of diseases constituting a hazard to society" and in another country HIV has been added to the list of dangerous contagious diseases.

69. The designation of HIV as a particularly dangerous, or hazardous, disease may obscure the fact that HIV infection can be avoided relatively easily through the avoidance of risk behaviours. The notion that HIV is a "hazard" to society may encourage a fatalistic attitude towards the disease, rather than promoting a sense of responsibility among uninfected individuals to protect themselves from infection. This runs counter to the recommendation of an international consultation on health legislation and ethics in the field of AIDS and HIV infection, which stated that "Health legislation should be used in a positive way to promote and support health education and the distribution of information that can provide the public with the means for voluntary behaviour change". 12/

(vi) Death certificates

70. In certain cases, laws are not themselves discriminatory but may encourage or allow for discriminatory actions. For example, in at least one country a law has been introduced to make it compulsory to include AIDS on a death certificate as the underlying cause of death, where this has been found to be the case. However, given the public nature of death certificates, such a law may result in an increase in the pain and suffering of the family of the deceased, who may be ostracized once it is known that their family member died as a consequence of AIDS.

(b) Discrimination by public authorities

71. In many cases, discriminatory practices, which are not necessarily sanctioned by law, are carried out by public authorities, ranging from national government personnel, to local government agencies, to the providers of public services. 13/

(i) Propaganda

72. In one case, a high-ranking national politician suggested that his political opponents were infected with HIV or had AIDS in an attempt to stigmatize them. This propaganda may not only have weakened his opponents; it may also have served to perpetuate negative and discriminatory attitudes towards people infected with HIV in the country concerned.

(ii) International travel

73. In at least one country there have been disturbing reports of immigration authorities demanding that persons of certain racial or national origin be tested for HIV prior to entering the country, in spite of the fact that entry of HIV-infected people is not prohibited by law and testing of travellers is not a legal requirement.

74. Foreign students of certain nationalities have been subjected to mandatory testing, and some have been deported when it has been found that they are infected with HIV. In certain cases, authorities have required students of certain nationalities to be tested for HIV prior to leaving their country of origin as a prerequisite to taking up their studentship.

75. Whether it is the unofficial actions of immigration officials, or the policies of the educational institutions concerned to test certain nationals for HIV before allowing them into the country, all such practices are based on an unfounded linkage between a person's nationality and his or her HIV serostatus.

76. Data gathered through the Special Rapporteur's questionnaire on AIDS and human rights (referred to in the introduction) also indicate that certain groups are being discriminated against in their entry into at least one country on the grounds of their occupation. The country concerned requires that all bar girls and night club girls entering the country with the intention of seeking employment produce a certificate proving that they are not infected with HIV. No other group is required to produce such a certificate before entering the country.

(iii) Prisons

77. In a number of countries, prison administrations have been reported to have engaged in practices which are discriminatory and degrading to prisoners who are infected with HIV. In a number of cases, prisoners are compulsorily tested and those who are found to be infected are kept in isolation from other prisoners. In at least one country, there have been reports of infected prisoners being denied medical treatment. In another country, prisoners who are infected with HIV have been subjected to human rights abuses and other forms of degradation and have been harassed by prison warders.

78. Article 10 of the International Covenant of Civil and Political Rights states that "All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person". This has been interpreted by the Human Rights Committee in General Comment 9 to mean that:

> "The humane treatment and the respect for the dignity of all persons deprived of their liberty is a basic standard of universal application which cannot depend entirely on material resources. While the Committee is aware that in other respects the modalities and conditions of detention may vary with the available resources, they must always be applied without discrimination, as required by Article 2 (1) [of the International Covenant of Civil and Political Rights].
>
> "Ultimate responsibility for the observance of this principle rests with the State as regards all institutions where persons are lawfully held against their will, not only in prisons but also, for example, hospitals, detention camps or correctional institutions." 14/

79. In the context of AIDS, discrimination in prisons, including the compulsory testing of prisoners, is wholly unwarranted. In 1987, WHO held a consultation on prevention and control of AIDS in prisons, which developed a consensus statement that included the following points:

> "Prisoners should not be subjected to discriminatory practices relating to HIV infection or AIDS such as involuntary testing, segregation or isolation, except when required for the prisoner's own well-being.
>
> "Decisions regarding testing and/or screening should be considered in the context of informed consent, the ability to maintain confidentiality and the provision of positive assistance to affected individuals." 15/

(iv) Housing

80. Public housing authorities have also been found to discriminate against people whom they believe are infected with HIV or who have AIDS. In one case, a man was evicted from a public nursing home when it became known that he was HIV positive.

81. Although HIV cannot be transmitted through casual contact, or through contact with inanimate objects which have been touched by infected persons, and in spite of the fact that in some countries it is the mandate of public housing authorities to ensure as far as possible that every person has access to adequate housing, certain of these authorities have discriminated against HIV-infected people and people with AIDS in the fulfilment of this responsibility.

(c) Discrimination by public health authorities

82. Ironically perhaps public health authorities have conducted some of the most harmful discriminatory practices. It should be noted, however, that in many instances, discrimination is an unintended facet or consequence of public health programmes or policies.

(i) Drug trials

83. An area of particular concern in the international community relates to the testing of candidate HIV vaccines and treatments for AIDS. It is increasingly clear that certain populations in developing countries are being, or will be, encouraged to participate in drug trials for the purpose of testing the safety and efficacy of drugs. While these populations would thus bear the health risks involved in such drug trials, there is concern that these people will not always benefit from the fruits of the research. It is widely anticipated that the cost of a vaccine or effective treatment, once it is developed, will be prohibitively high for many developing countries.

84. The ethical issues of proportionality and justice thus raised led a WHO expert consultation to conclude that WHO has an important role to play by:

> "promoting strategies that would be necessary to ensure vaccine availability and delivery worldwide, once one or more acceptable vaccines are developed. It is considered essential that a vaccine developed or

evaluated through international scientific collaboration be made available to developing countries under the most advantageous possible conditions and the Consultation calls upon WHO to seek mechanisms to achieve this goal through collaboration with scientists, institutions, non-governmental organizations, member States, and other United Nations organizations". 16/

(ii) Medical treatment of people with AIDS

85. Data from the questionnaire on AIDS and human rights referred to above shows that in one instance special accommodation for the medical treatment of people with AIDS has been designated in order that medical personnel and visitors can be "assured protection". The underlying belief that people with AIDS are a danger to others is erroneous and offensive to the dignity of these people. Moreover, the development of special places for treating people with AIDS on these grounds may represent a waste of resources, which could be better spent on providing health care to the sick.

86. There have been reports from a number of countries of health workers refusing to treat people with AIDS, and hospital personnel refusing to admit AIDS patients. In some cases this discrimination is grounded in the belief that caring for AIDS patients is not "economical", because the cost of doing so is relatively high, and alternative uses of the resources could render greater "benefits". Sentencing people with AIDS to civil death in this way violates the right to health care and is a breach of medical ethics which state that medical personnel have a duty to treat all people in need of medical attention, without discrimination, and without reference to the origin or nature of their illness.

87. Responses to the Special Rapporteur's questionnaire reveal that certain medical authorities have decided to place AIDS patients in special hospital wings. One respondent noted that the separation of AIDS patients from other hospital patients applied equally to paediatric cases of AIDS.

88. It may be that the establishment of separate AIDS wards has logistical advantages for nursing staff. However, it should be remembered that there is rarely any public health rationale for isolating AIDS patients. The only circumstances in which isolation would be justified is where the AIDS patient is suffering from a contagious disease, such as tuberculosis. In these cases, they may be isolated in the same way that other tuberculosis patients are isolated in hospitals. Other than in these circumstances, the establishment of a special AIDS ward may, unless such a ward is carefully integrated into the hospital, run the risk of encouraging stigmatization.

(iii) Access to health care

89. Even where health authorities do provide health care to people with AIDS, in some instances this care is provided on a discriminatory basis. Women, in particular, are discriminated against in the provision of health care in relation to HIV and AIDS. In areas where the ratio of infected men to women, and men with AIDS to women with AIDS, is approximately 1:1, it has been observed that the majority of hospital beds for AIDS patients are taken by men.

90. In addition, reports from certain areas indicate that in some cases, when a woman with AIDS seeks medical treatment or care, the health-care workers dismiss her as a prostitute, and therefore "responsible" for her illness, and consequently not worthy of treatment.

(iv) Information and education on HIV and AIDS

91. Many AIDS education programmes, which are designed to prevent the further transmission of HIV, may inadvertently discriminate against different groups of people. For example, in one country, great emphasis was placed on the mass mailing of information leaflets. This strategy, as well as that which utilizes television and radio for disseminating information on HIV and AIDS, overlooks the needs of the thousands of homeless people who do not have an address to which leaflets can be sent, nor access to television and radio. In addition, a great deal of HIV and AIDS information is transmitted through pamphlets, posters, and brochures, which neglect the needs of illiterate people, and of people who read minority languages.

(v) Blood donors

92. Unintended discrimination is also in evidence in certain efforts to ensure safe blood supplies. In one country, grounds for exclusion from blood donation include having had sexual intercourse with persons from certain regions of the world. Since the region is a large one, with very different sero-prevalence levels within it, this exclusionary regulation is clearly not based on sound public health concerns, but rather on racism and xenophobia. The consequence of such a practice is to heighten associations in the public imagination between people from particular regions and the AIDS pandemic, thereby increasing racism and negative attitudes which are detrimental to public health measures to address HIV and AIDS.

(vi) Health workers and care providers

93. Discrimination occurs among health workers and care givers concerned with HIV and AIDS, too. It is widely recognized that health workers require protective garments (such as gloves) to ensure that they do not come into contact with contaminated blood, including HIV-infected blood. However, while many health services consider the provision of protective garments to doctors to be a high priority, less consideration is given to the needs of personnel in the informal health sector. This includes, for example, people caring for persons with AIDS in the home and also traditional birth attendants who clearly come into direct contact with blood on a regular basis.

(vii) Mandatory screening of pregnant women

94. Mandatory screening of pregnant women, often for the purposes of epidemiological study, raises numerous questions regarding the arbitrary singling out of this group for HIV testing, and needs to be more carefully considered.

(d) Discrimination in private organizations

95. A large number of reports of HIV- and AIDS-related discrimination relate to discrimination in employment, insurance company policies, schools, private housing and other aspects of the private sector.

(i) Employment

96. Many people identified as being HIV infected have been dismissed from their jobs or refused employment for which they would otherwise have qualified. For example, in some countries, householders are insisting that their nannies, housemaids, and other domestic staff are tested for HIV so that any persons found to be infected might be dismissed. Out of concern for their families, they do not wish to have infected persons in their house or caring for their children. When informed that HIV cannot be spread through casual contact, such people will point to the perceived risk of infection through blood contact as a result of accidents involving, for instance, cuts and abrasions. However, it must be recognized that this risk is extremely slight, and, as far as is known, there have been no reported cases of infection being passed through day-to-day abrasions or household injuries.

97. Such arguments raise difficult questions. In determining whether it is legitimate to dismiss or fail to employ an infected person in any particular job it has to be determined whether there are sufficient grounds for regarding that person as unsuitable for the post. By and large, HIV infection does not constitute sufficient grounds for denying an individual the right to work.

98. It is not only in domestic service that people with HIV infection or AIDS have suffered discrimination with respect to obtaining or maintaining employment. Many employers have attempted to justify termination of an infected person's contract on the grounds that they have an obligation to provide safe working conditions for fellow employees who may be fearful of infection. Some employers are also requiring HIV tests as a prerequisite for job applications. However, as WHO is continually stressing, HIV infection cannot be spread by casual contact, and there is thus no public health rationale for restricting infected people's right to work.

99. It follows that there is no justification for an HIV test as a pre-employment prerequisite. Nor is there justification for refusing to hire job applicants simply on the grounds that they are HIV-infected or have AIDS. Whilst infected people remain fit, there is no reason why they should not undertake work. If the applicant had already progressed to ill-health as a result of AIDS this would be observed in a normal medical examination, and his or her capacity to undertake the employment judged in the normal manner.

100. In spite of the conclusion of the joint International Labour Office (ILO)/WHO Meeting on AIDS in the Workplace, that "in the vast majority of occupations and occupational settings, work does not involve the risk of acquiring or transmitting HIV between workers, from worker to client, or from client to worker" 17/, there are numerous reports of discrimination in a wide range of workplaces on the basis of HIV infection. 18/

(ii) Insurance

101. Certain insurance companies require applicants for life insurance policies to indicate on their application form whether they have ever been tested for HIV. An affirmative answer - particularly by single men aged 30 or over who are considered as possibly being homosexual and therefore "at risk" of infection - can lead to a requirement to pay a higher insurance premium or even to being refused a life insurance policy. Although this practice is intended to protect insurance companies from the prospect of having to pay large sums for life insurance claims, it has a devastating impact on public health, as it inhibits many people from being tested for HIV, for fear of being refused life insurance. Many of these people will remain anxious about their HIV serostatus and, if infected, some may unwittingly transmit HIV to others.

(iii) Educational institutions

102. In a number of countries children and students with HIV infection have suffered discrimination at school, college or university. In one instance, a young child attending a nursery school was ordered by a Court to sit in a specially-constructed plastic "bubble" to prevent her from having any physical contact with other children.

103. In another case, a young boy who was infected with HIV was required by his school to use a separate lavatory and eating and drinking facilities.

104. There have been a number of cases when it has become known that a child or student is infected with HIV, the child or student is expelled from the educational institution. As in virtually all cases of HIV-related discrimination in educational establishments, expulsion of infected children or students is based on the mistaken belief that HIV can be transmitted through casual contact in the normal, day-to-day setting of the educational institution.

105. In many cases, educational authorities discriminate against infected children because they are encouraged to do so by the parents of other children or students. One respondent to the AIDS and human rights questionnaire reported that there had been a number of cases of parents protesting at the attendance of an infected child at their own children's school. This behaviour has also been reported in other regions of the world, frequently resulting in the expulsion or hostile treatment of the infected child.

(iv) Private housing

106. Not all discrimination in housing is perpetrated by public housing authorities. On the contrary, there are a large number of cases of private house owners evicting tenants on the grounds of suspected HIV infection or other association with AIDS and of people refusing to sell houses to others whom they believe to be infected with HIV.

107. In addition to individuals being evicted or denied a lease or opportunity to purchase accommodation on the grounds that they are infected or thought to be infected with HIV, there have also been reports of AIDS service organizations being denied leases for office space.

(e) Discrimination in communities and within families

108. Experience to date suggests that a great deal of the stigmatization of people affected by HIV and AIDS relates to the discriminatory acts of individuals and communities, rather than those perpetrated by institutions and agencies in public and private sectors. The range of forms of discrimination as it occurs within families and communities is too vast to be considered comprehensively in this context. Instead, some examples are provided below which may illustrate the diversity of discriminatary actions that have been reported.

(i) Orphans

109. In some parts of the world, the number of children who are losing one or both of their parents because of AIDS is growing dramatically. For example, UNICEF estimates that in the ten most affected Central and Eastern African countries, the cumulative number of children aged 0-15 years whose mothers die of AIDS will increase to between 3.1 and 5.5 million by the year 2000. 19/

110. In all regions of the world, there are families which have been hesitant to adopt or foster children who have been orphaned as a result of AIDS, as they do not fully understand the means by which infection is spread, and are afraid that they or their children will be at risk of infection. These orphans may thus be left without the benefit of a family home and without the love and affection which all children require.

111. Another area of concern relates to the rising number of babies and children who are infected with HIV or who have AIDS who are being abandoned. Some of these babies and children are cared for in hospital; others are placed in orphanages. Those who are infected may not be in need of hospital treatment, but may be refused a place in an orphanage because of their infection status.

112. In countries with legal adoption procedures, adoptive parents have begun to request that babies are tested for HIV. Cases have occurred of adoptive parents discovering that the child was infected after they had completed all the formal legal procedures, and refusing then to accept the child.

113. The question of whether or not a child put up for adoption should have an HIV test is difficult to address. It is common for such children to have routine medical examinations. However, knowledge of HIV infection is likely to be disadvantageous for the child, as it might hinder his or her adoption. Should a child infected with HIV be denied the possibility of a normal family life for the remainder of his or her life? Further, would there be any justification for breaching the child's medical confidentiality by informing the potential adoptive parents of the result of the test? What grounds would

potential parents have for demanding a test? Until adoption has been completed, they are not acting in loco parentis. It should also be remembered that adoptive parents undertake to care for the child whether or not he or she becomes ill, fatally or otherwise.

114. Conversely, denying potential adoptive parents the opportunity to know whether a child is infected, may result in considerable anguish if it is discovered, after adoption, that the child is infected. This might lead to rejection or maltreatment of the child, and anxieties among other family members.

115. A further issue raised in this context is whether adoptive parents should themselves be tested. While this might serve certain interests of the child concerned, such a policy could also increase discrimination and stigmatization against people infected with HIV. Moreover, were adoptive parents to be tested for HIV, and produce a negative test result, this would provide no guarantee that the parents would not become infected subsequent to adopting the child.

(ii) Civil death

116. Perhaps the most insidious form of discrimination relating to HIV and AIDS is that which is based on an underlying belief that people who are infected, and especially people with AIDS, are not worthy of investments of time, money, or any other resource because they are going to die relatively soon. Indeed, one person with AIDS reported that when he told a friend of his diagnosis, the friend began speaking about him in the past tense, as though he were already dead. In another incident, a young drug user who was infected with HIV was told by his family that they would prefer him to die of a drug overdose than because of AIDS, as this would be less shameful for them.

117. The anguish which "civil death" can cause is illustrated in a number of cases, not least by those in which people with AIDS have committed suicide because they could not cope with the feelings of rejection that they had been subjected to.

118. In one instance, an infected woman wrote a play in which she described her experience of losing her job and her friend, and of seeing her daughter being rejected by her friends.

(iii) Religious norms and cultural values

119. In many societies, religious norms and values have led to moralistic attitudes which discriminate against persons affected by HIV and AIDS. In a number of countries, public health and educational authorities are not allowed to target HIV information at homosexuals, as this is considered to promote what is considered to be immoral behaviour. In many instances, there have been reports of religious objections to the use of explicit language regarding safer sex practices, and to the promotion of condom use as a means of avoiding HIV transmission.

120. There has also been considerable opposition to the distribution of clean needles and syringes to drug users, or the distribution of bleach so that they might disinfect their injection equipment. Although distribution of these items is intended to prevent HIV transmission through injected drug use, opposition has been vociferous on the grounds that such action would effectively condone what is considered to be immoral - and often illegal - behaviour. Of course, it is not possible to apply such policy in all countries, without conflicting social and moral values, and we do not pretend, by pointing out such facts, to approve or propose the aforesaid practice as a universally valid solution.

121. In the recent Global Expert Meeting organized by the International Association of Rights and Humanity in association with the University of Limburg, participants discussed the importance, in the context of AIDS, of the right to information, and the individual's right to make autonomous decisions regarding his or her own person. One working group recommended respect for these rights necessitate freedom from oppression by doctrinal or psychological coercion. 20/

B. Causes of discrimination

122. In order to address the manifold cases of discrimination relating to HIV and AIDS, it is vitally important to understand what the underlying causes of such discrimination might be. The causes, like the forms of discrimination, are many. However, it is possible at this stage to begin to outline some of the phenomena at the root of much HIV- and AIDS-related discrimination.

1. Pre-existing prejudice

123. Hostility towards and discrimination against people assumed to be associated with HIV and AIDS are often rooted in prejudice against the groups in question. For example, the case referred to above, in which numerous homosexual men were beaten up, is attributable to prejudice against homosexuality per se, rather than to a genuine attempt to reduce the transmission of HIV. Similarly, police harassment of prostitutes, ostensibly on the grounds that their occupation serves to increase the spread of HIV, does not prevent the spread of HIV: rather, it is an expression of hostility and prejudice towards an occupational group which has long been the target of discrimination and ill treatment.

124. Such prejudice pre-dates the AIDS pandemic. However, the pandemic has provided a new vehicle in which it can be voiced. However, as has been pointed out, by articulating such prejudice in the context of HIV and AIDS, people are weakening efforts to prevent the spread of HIV and to address effectively the consequences of the pandemic.

2. Ignorance of the means of HIV transmission

125. It has been noted above that in numerous cases people infected, or thought to be infected, with HIV have been discriminated against because of fears that they will infect others. It is wrongly believed that HIV can be

transmitted through casual contact: hence the exclusion, eviction or expulsion of infected people from places of work, housing, schools, and other contexts in which they do not, in fact, pose any risk to other people.

126. Historically, certain contagious diseases have been controlled through isolation or quarantine. Where a virus is airborne, there may be a public health rationale for such a measure. However, in the case of HIV there is no such rationale, as HIV is not an airborne virus: it can only be spread through sexual intercourse, infected blood, blood products or human tissue, or from mother to child. Isolation of people on the grounds of HIV infection is unnecessary in public health terms, and is consequently a waste of resources which could be better spent on AIDS education programmes.

3. Discrimination on the grounds of ill health

127. There is in many societies a widespread fear of illness and disease. Studies have shown that often hostility towards ill people is rooted in fears of mortality.

128. Such fears are deep-rooted and widespread, and in the context of AIDS are illustrated by public ostracism and rejection of people who are physically debilitated as a consequence of AIDS. However, such fears are neither rational nor helpful in addressing the AIDS pandemic.

129. It has been found that where people infected with HIV and people with AIDS are provided with a supportive environment, they are better able to cope with their condition. Indeed, where people with HIV infection and people with AIDS are integrated into society, they prove to be effective educators on avoidance of HIV infection. As was noted in the report of the International Consultation on AIDS and Human Rights, experience has taught us that "a supportive environment is a necessity, not a luxury". 21/

4. Racism

130. It was noted above that in some countries, immigration or education officials insist on HIV testing students of certain races or nationalities before allowing the students to enter the country in order to study. In another instance, it was pointed out that persons who have had sexual intercourse with people of a certain region - without reference to the level of seroprevalence within that region - are discouraged from donating blood. Such practices are clear illustrations of the racism which underlines much discrimination relating to HIV and AIDS.

131. Another example of the link between racism and HIV- and AIDS-related discrimination is the continued widespread "blaming" of certain races or nationalities for having "started" the AIDS pandemic. As yet, scientists have not identified the origins of the pandemic. WHO has stated that HIV is a virus of unknown origin. Nevertheless, certain people continue to blame races or nations for the pandemic, thus giving expression to their own racism and prejudice.

5. Moralistic judgements relating to HIV and AIDS

132. It was noted in the Special Rapporteur's Concise Note of July 1988 22/ that fears regarding HIV and AIDS are sometimes

> "wrapped up in a moral discourse which seeks to re-establish strict and puritanical social customs, in some cases to prevent practices that are regarded as the basis of the infection from extending to the society as a whole. In other cases this is to eliminate customs considered to be too liberal, to which the spread of AIDS is attributed. As a result, there is overt or covert discrimination against HIV carriers or persons with AIDS.
>
> "In any event both approaches are mistaken, since neither fear nor moral crusading will stop or eradicate the disease and might even be counter-productive ..."

133. Rejection and stigmatization of people affected by HIV are often prompted by moral disapproval of the behaviour which is believed to have led to HIV infection. Such moralizing may be rooted in religious or political beliefs, or in cultural norms which have been passed on from one generation to the next.

134. Its expression may take the form of social rejection, prompted by a profound reluctance to be associated in any way with what is regarded as "sinful" or "morally abhorrent" behaviour.

135. Sometimes these moral judgements lead to the adoption of punitive attitudes or measures. AIDS has been refered to by some as "nature's revenge for immmoral behaviour". In other cases, it has been suggested that people with AIDS be tatooed, so that others are alerted not only to their infection status, but also to their immorality and sinfulness. The persecution, degradation and ill-treatment of people affected by AIDS are in many instances the articulation of people's sense of moral outrage at behaviour associated with HIV and AIDS.

136. It has been shown that such attitudes are misguided and counter-productive. In responding to a public health crisis of the proportions of the AIDS pandemic, there is no room for moralizing and punitive measures. People affected by HIV and AIDS should enjoy the same rights and freedoms as others.

II. LEGAL AND CONCEPTUAL ISSUES

A. Relationship between the control of contagious diseases and human rights protection

137. Prior to major medical advances, particularly the development of antibiotics, it was sometimes necessary to isolate infected persons in order to curtail the spread of contagious diseases. But the history of societies' response to contagious diseases indicates that typical reactions were often as much based on fear as on an understanding of which measures would be effective as a means of limiting the spread of infection.

138. As expressed in a United Nations Centre for Human Rights statement at the International Consultation on AIDS and Human Rights,

> "One might say that we have learned from past experience how not to react to disease but not how to act. Typical reactions were often fear and rejection rather than measures needed to contain and control diseases, not to mention the respect of human rights of those affected by the disease. It is sufficient to remind ourselves that not long ago the death penalty was applied against persons whose only "crime" was a fatal or contagious disease. Punishment was used as if disease were a crime. Segregation, expulsion or detention of the sick was frequent. The institution of quarantine has survived for centuries, and is sometimes proposed without a public health justification, as now in the case of AIDS. Plague barriers were used between countries in the eighteenth century, preventing passage for all except those with a certificate of good health. Similar certificates have been introduced today in the case of AIDS. There have been proposals to use old leper colonies for the internment of HIV-infected persons and people with AIDS. Such reactions testify to the fact that some of the fear and rejection that we know from history have survived. Conventional views die hard, and it is still sometimes heard that AIDS is a self-inflicted disease hence those affected should be punished and isolated rather than helped and supported." 23/

139. Recourse to legislation is a characteristic response of societies to outbreaks of communicable diseases, and public health authorities have been given wide powers to take those steps necessary to limit the spread of contagion. As we have seen, in the context of AIDS, over 90 States have introduced legislation of some sort. In many countries legislation covers such vital issues as the protection of a safe blood supply, and/or the requirement of reporting or notification of AIDS cases for surveillance purposes. In such circumstances the law may play an important role, but it must constantly be borne in mind that legislation *per se* is unlikely to prevent the further spread of HIV. Such prevention requires human behavioural change.

140. Traditional public health measures introduced to tackle infectious diseases may be considered under the headings of prevention and control; surveillance, detection and reporting; care for the sick; and research. To a greater or lesser extent some AIDS-related policies introduced under each of

these headings have raised human rights and ethical concerns, but in the context of discrimination it is laws and policies aimed at prevention and control that pose the most difficulties.

141. In the absence of a vaccine against HIV infection, or a cure for AIDS, the main acceptable policies being adopted to prevent the spread of HIV infection are:

(1) Blood safety initiatives

(2) Public education as to the nature of AIDS, the means of HIV transmission, and the precautions that might be taken to reduce the risk of infection

(3) Counselling of HIV-infected people so that they may take the steps necessary to protect others from the risk of infection

(4) Condom promotion and distribution

(5) Sterile injecting equipment and other methods of combating transmission of HIV through injecting drug use

(6) Observance of "universal precautions for the avoidance of infection" in health-care settings and in home-based care.

142. Such policies aimed at preventing the further spread of HIV raise few difficulties with respect to the enjoyment of human rights, although, as we have seen there may, on occasions, be unintended discriminatory elements in the implementation of such policies.

143. Other policies, however, may raise more serious human rights issues or be of a deliberately discriminatory nature. In several countries policy-makers are being called upon to introduce restrictive control measures such as isolation of infected people, or mandatory policies against certain groups in society. Often, on analysis, it is found that these calls are based more on ignorance of the means of HIV transmission or on underlying prejudice against certain groups of people than on sound public health requirements.

144. Many of these restrictive policies require a limitation on the enjoyment of such fundamental human rights as the right to liberty, freedom of movement, freedom of association, or the right to marry and found a family. Such policies must, therefore, be strictly judged against international human rights standards and the limitation clauses contained in international instruments.

1. Limitation clauses in international human rights texts

145. While there can be no justification for arbitrary discrimination against an individual in the enjoyment of his or her fundamental human rights, it may be legitimate to restrict individual liberty if this is necessary in order to protect public health or welfare.

146. In the past, limitations of the enjoyment by individuals of some of their human rights have sometimes been justified by an appeal to exceptional laws and policies required to achieve a legitimate aim of society. In the context of HIV/AIDS, the protection of the rights and freedoms of others and the protection of public health are frequently mentioned.

147. That these restrictions on the enjoyment of rights cannot be arbitrarily imposed is confirmed by article 29 of the Universal Declaration of Human Rights which provides:

> "(1) Everyone has duties to the community in which alone the free and full development of his personality is possible.
>
> (2) In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society." [Emphasis added]

148. This principle is further expanded upon in articles 4 and 8.1 (a) of the International Covenant on Economic, Social and Cultural Rights, as well as articles 4, 12 (3), 13, 18 (3), 21 and 22 (2) of the International Covenant on Civil and Political Rights.

149. The list of exceptions includes such items as national security, public order, safety and morals, the general welfare and the protection of the rights and freedoms of others. Most importantly, "public health" or what we may term here the "public health exception" is included as a measure restricting the exercise of rights or freedoms with the intention of removing or reducing a claimed danger to public health.

150. In the context of the AIDS pandemic, two of these exceptions are of potential relevance: the exercise of the rights and freedoms of others, and protection of the public health. As the background paper prepared for the International Consultation on AIDS and Human Rights states:

> "Among the rights and freedoms of others the most important one that needs to be considered here, at least so long as there is no cure for AIDS, is the right to life. Apart from the question of sanctioning of certain forms of conduct in order to protect this right, in relation to AIDS this right can only impose on a state the obligation to take what measures it reasonably can to prolong the lives of its inhabitants where this can be done at a cost that is reasonable, both in terms of resources and restrictions on other human rights.
>
> "Since AIDS, once the full clinical syndrome has developed, is almost invariably fatal and since there is at present no known cure for it, every new HIV infection is a potential fatality and thereby threatens the right to life of the person infected. Accordingly, every measure which succeeds in reducing the spread of HIV will not only serve "the protection of public health", but will automatically serve to protect the right to life. It follows that it will be enough to consider such

measures under the aspect of the protection of public health and that it will be unnecessary to consider them separately from the point of view of the protection of the right to life, and so (with few exceptions) of "the protection of the rights and freedoms of others". 24/

151. It remains to be determined to what extent it is legitimate to restrict individual rights and liberties in order to protect public health in the context of the AIDS pandemic. It is certain that such a restriction cannot be legitimate solely on the grounds that it reflects public concern. It must be shown that there is a scientific rationale for the policy which is required in order to protect public health.

152. International human rights standards and jurisprudence, and national public health laws and practices, invariably require that measures to protect public health which restrict individual liberties are justifiable only to the extent that they are:

(a) Provided by a specific law which is necessary in a democratic society for the purpose of promoting the general welfare of society;

(b) Strictly required for the protection of public health;

(c) Effective as a means of preventing the spread of infection; and

(d) Not arbitrarily directed against a particular individual, group or section of society.

153. In addition, restrictions on rights and liberties are considered legitimate only where it can be shown that the measures are both:

(a) Strictly proportional weighed both against their adverse effects on the person on whom they are imposed and against the public interest in the free exercise of the right concerned; and

(b) The least intrusive and restrictive method of achieving the desired end.

154. In the context of the AIDS pandemic, any measures which restrict individual rights and liberties would, in order to be legitimate, need to be provided for by law, avoid arbitrary selection of the group affected, and be strictly necessary in order to protect public health. It has constantly been asserted by WHO and public health officials throughout the world that there is no public health rationale for restricting the liberty or rights of a person on the grounds of his or her HIV status.

155. As WHO has stated:

"There is no public health rationale to justify isolation, quarantine, or any discriminatory measures based solely on the fact that a person is suspected or known to be HIV-infected ... Persons suspected or known to be HIV-infected should remain integrated within society to the maximum possible extent and be helped to assume responsibility for preventing HIV transmission to others. Exclusion of persons suspected or known to be

> HIV-infected would be unjustified in public health terms and would seriously jeopardize educational and other efforts to prevent the spread of HIV." 25/

156. Unlike leprosy or tuberculosis, for example, HIV cannot be transmitted through casual contact, nor through the respiratory route. In view of this, there is no public health benefit to be gained from isolating a person or otherwise depriving him or her of the right to work, education, social security, equal protection under law, or any other right, simply because he or she is infected with HIV or has AIDS. On the contrary, any restriction of individual liberty or enjoyment of rights on the grounds of HIV status has been shown to be counter-productive in public health terms.

157. In the absence of any public health rationale for restricting rights and liberties on the grounds of HIV and AIDS, any such restriction which does take place is a serious infringement of human rights and runs counter to the fundamental principle of non-discrimination in the enjoyment of rights and liberties.

158. The Special Rapporteur is unaware of any international legal case to date which has specifically dealt with the restriction on alleged public health grounds of the rights and freedoms of a person with HIV infection or AIDS, and so this view has yet to be confirmed by an international legal forum. Further study is required on this point. In addition, the examination of States' reports on the implementation of human rights treaties could be undertaken by the treaty-based human rights bodies so that they might assess the compatability of national laws and practices in the area of AIDS with the existing human rights standards.

2. Relationship to public health legislation

159. In most States, public health legislation has historically granted powers to public health authorities with respect to a wide variety of functions. These range from school education and health programmes, monitoring food and workplace safety, to surveillance and control of transmissible disease. As the author quoted below has noted, these powers reflect two distinctive approaches, namely a health promoting or cooperative one, and a policing or potentially coercive one.

160. In many societies the AIDS pandemic has given rise to renewed concern by public health officials, human rights lawyers and ethicists about the need to look afresh at the scope of the powers granted to public health authorities, and the basis of public health laws and their implementation.

161. As Gilmour has written:

> "Most of the laws mandating public health functions were enacted before the discovery of AIDS and HIV and few of these laws have subsequently been subjected to systematic review and revision. These laws seldom define "public health" but authorize public health authorities to investigate and police epidemic transmissible diseases, so as to prevent transmission of the relevant infectious agents. Authorities are empowered with wide discretion to act quickly and efficiently to control

these transmissible diseases. Often, public health laws list the diseases to which public health authorities can and should respond. In a variety of jurisdictions, HIV infection and/or AIDS has been added to this list of diseases - diseases distinct from HIV/AIDS by their modes of transmission and by the ways in which their transmission might be prevented or their consequences controlled. Examples of these diseases include hepatitis, tuberculosis, cholera and Salmonella." 26/

162. Similar concerns were expressed by participants at the International Consultation on Health Legislation and Ethics in the Field of AIDS and HIV, convened at Oslo, from 26 to 29 April 1988. The Report of the Consultation includes the following recommendations:

"(2) Existing laws for the prevention and control of infectious diseases should be re-examined to ensure that they are up-to-date to deal with this epidemic and to protect the rights of the individual and the community.

"(3) Traditional legislative measures in the field of public health should be re-evaluated to assess their effectiveness and ethical acceptability in relation to this epidemic.

"(4) Health legislation should be used in a positive way to promote and support health education and the distribution of information that can provide the public with the means for voluntary behavioural change ...

"(6) Existing legal regulations that may have become irrelevant, outdated, or even counter-productive in general or with specific regard to AIDS, must be removed." 27/

163. Further analysis needs to be made of the relationship between national public health laws and the provisions of international human rights texts, and between the control of contagious diseases and respect for human rights and liberties.

B. The public health rationale for avoidance of HIV- and AIDS-related discrimination

164. Since HIV cannot be transmitted through casual contact, it is widely agreed that people who are, or may be, infected should remain integrated within society as far as possible, and should be assisted in assuming responsibility for preventing HIV transmission to others. As we have seen, there is no public health rationale for isolating people infected with HIV, or for discriminating against them in housing, schooling, employment or other areas of social life.

165. On the contrary, there is a strong public health rationale for avoiding HIV- and AIDS-related discrimination, as this causes unnecessary suffering and can lead to a deterioration in the health and well-being of those already sick as a consequence of AIDS. Moreover, the threat of discrimination can deter many people who may be infected with HIV from coming forward for HIV testing, thus pushing AIDS underground and jeopardizing educational and other efforts to prevent the further spread of HIV.

166. The public health rationale for avoiding HIV- and AIDS-related discrimination has been acknowledged in a number of international forums referred to throughout this report. The importance of avoiding discrimination within the overall public health context is reflected in the high priority given to countering discrimination by the WHO Global Programme on AIDS, the Director of which has commented on the detrimental consequences of discrimination for efforts to prevent the further spread of the pandemic. 28/

167. The WHO statement on the social aspects of AIDS quoted above continues:

> "Furthermore, discriminatory measures create additional problems and cause unnecessary human suffering. The avoidance of discrimination against persons known or suspected to be HIV-infected is important for AIDS prevention and control; failure to prevent such discrimination may endanger public health." 29/

168. Experience to date suggests that public health requires more than the avoidance of HIV- and AIDS-related discrimination. It is essential to develop a supportive environment to protect the rights of people affected by HIV and AIDS, promote their full social integration and encourage their active participation in AIDS prevention and care efforts. The International Consultation on Health Legislation and Ethics in the Field of AIDS and HIV recommended that:

> "in daily life a real conviviality should be maintained towards people who have been affected by HIV - be they seropositive persons, AIDS patients or simply persons who are distressed or anxious because they have had risk behaviours or because people close to them are sick from AIDS or have died from it ... The barriers between infected and non-infected persons have to be brought down." 30/

169. The public health risks inherent in discrimination against and stigmatization of people infected by HIV or thought to be at risk of infection led the World Health Assembly to direct WHO:

> "to stress to Member States and to all others concerned, the dangers to the health of everyone of discriminatory action against and stigmatization of HIV-infected people and people with AIDS and members of population groups by continuing to provide accurate information on AIDS and guidance on its prevention and control." 31/

170. Protecting the human rights and dignity of HIV-infected people, including people with AIDS, and people considered to be at risk of infection, is a necessity for effective public health programmes to prevent and control HIV/AIDS. As WHO has stressed, it is not a question of the "rights of the many" or the "rights of the few"; the protection of the uninfected majority depends upon and is inextricably bound up with the protection of the rights and dignity of the infected person. Thus, the protection of the rights and dignity of HIV-infected persons has become an integral part of the Global AIDS Strategy.

171. As the Report of the International Consultation on AIDS and Human Rights emphasized:

> "In the 1980s, we have learned and we have taught that discrimination and stigmatization of HIV-infected people must be prevented - for the sake of all. More recently, we have discovered that beyond the limited concept of anti-discrimination there is a more positive and active quality - a respect for human rights and dignity - a spirit of active tolerance. Yet even beyond anti-discrimination and tolerance, there is a higher call - to solidarity.
>
> "Solidarity is at once a personal and a universal matter, for it raises the fundamental question of what is the "self" and what is the "other". One of the glories of our era is that we have witnessed the birth of global solidarity - imperfect, struggling, yet nevertheless real - in the creation of the United Nations, in the concern about nuclear war, in the growing worldwide resolve to protect the environment, and in AIDS." 22/

172. It has long been recognized that trade-offs between the rights of some people and the rights of others undermine the very basis of human rights. As was further stated at the International Consultation:

> "In fact, international human rights law sets very strict conditions for restrictions in the enjoyment of human rights. Thus one cannot respect some rights at the expense of others, nor can one respect the rights of some while denying that others have equal rights. To justify AIDS-related discrimination a conflict was claimed to exist between the rights of the "uninfected majority" and the rights of those infected with HIV or ill with AIDS. Consequently, the rights of persons infected with HIV and AIDS patients were restricted or denied altogether. This does not represent a conceptual conflict between rights of some and rights of others, but between the recognition of human rights of all human beings and their denial."

173. The call to respect the human rights of all is not solely a requirement of effective public health programmes, but a moral imperative which binds us all. As Hausermann has written:

> "AIDS is not simply a question of rights, but also of humanity. Any abuse of human rights impugns human dignity and thus affects us all, wounding not only the humanity of those suffering the abuse and those directly responsible for it, but each of us: for humanity is an interdependent whole. None of us should be indifferent to the suffering of others." 33/

C. Prohibition of discrimination in international human rights law

174. Human rights stem from the recognition of the equal worth and dignity of every man, woman and child. Thus observance of the principle of non-discrimination is fundamental to the protection of human rights.

175. As we have seen, Ministries of Health throughout the world share WHO's recognition that the success of AIDS prevention and care efforts is inextricably bound up with consistent respect for human rights and ethical principles. Thus respect for the principle of non-discrimination is an essential part of effective policies to protect the right to the highest attainable standard of health, not only for those infected with HIV, but for the uninfected majority. Yet, throughout the world people associated with AIDS are suffering prejudice and stigmatization, and discrimination in the enjoyment of their fundamental rights.

176. The discrimination suffered is not solely a result of state laws or policies, but also flows from the actions of corporations and individuals. The extent to which these particular abuses amount to violations of international human rights law needs to be more fully analysed.

177. The international human rights legal provisions containing the principles of non-discrimination and of the equality of women and men are well known to the members of the Sub-Commission. But their application in the context of AIDS-related discrimination is not without debate.

178. Discrimination in the context of the AIDS pandemic is conceptually linked to a number of other issues of relevance to the work of the Sub-Commission, racial and sexual discrimination, discrimination on the grounds of ill-health, human rights and disabilities, the right to leave and return to one's own country, the rights of aliens, issues relating to administrative detention, the implementation of economic, social and cultural rights (particularly the right to health care and family planning services), the relationship between poverty and the lack of enjoyment of human rights, the right to development, the relationship between cultural and religious rights, the right to information and education concerning sexual matters, and so forth.

179. It is not possible to go into all these issues in detail in this progress report. What follows is intended to provide a basis for discussion at the forty-third session of the Sub-Commission to assist in defining the substantive issues relating to discrimination in the context of the AIDS pandemic.

1. Grounds for discrimination

180. As we have seen the causes of AIDS-related discrimination are various and many. They range from underlying prejudice against such people as homosexuals, prostitutes, drug users, or those suffering ill-health, to racism and sexism. Of these, only the last two grounds are usually specifically prohibited by international human rights texts.

181. The conventional phrase in international texts prohibits discrimination in the enjoyment of the rights confirmed in the instrument concerned on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. 34/

182. Newer texts have included other grounds, for instance article 2 (1) of the Convention on the Rights of the Child lists "disability".

183. An outstanding question of international legal scholarship remaining to be resolved is whether these listed grounds are to be considered exhaustive or illustrative. This point is of particular relevance in the context of AIDS-related discrimination since much of this discrimination is on grounds such as HIV status or ill-health, sexual orientation, occupation or lifestyle.

184. There is one potentially significant distinction between the texts of the International Covenant on Civil and Political Rights (ICCPR) and that of the twin International Covenant on Economic, Social and Cultural Rights (ICESCR). The former, like the Universal Declaration of Human Rights, prefaces the list of grounds for discrimination with the phrase "such as". In his study on the non-discrimination provision of the International Covenenat on Economic, Social and Cultural Rights, Craven notes that during the drafting of that Covenant:

> "A three power amendment replaced the phrase 'such as' with the phrase 'as to'. Given the lack of discussion over this change, it has been assumed that the enumeration remains merely illustrative. This would seem to be confirmed by the reference to 'other status' which is somewhat open ended. Moreover, during the drafting of the ICCPR, certain proposals for grounds of discrimination were deemed unnecessary because they fell into the ambit of the expressions 'discrimination on any ground' and 'other status', reinforcing the idea that the listed grounds can not be seen as exhaustive." 35/

185. It is attractive to think that these grounds are intended to be illustrative since discrimination on any grounds offends human dignity. Many jurists believe that the grounds of discrimination relevant in the context of AIDS fall, if not already covered by one of the listed grounds, within the phrase "or other status". Furthermore, at least as regards enjoyment of the fundamental human rights, international provisions invariably state "everyone" shall have the right to enjoy the right. Nevertheless, there has been a trend in recent years to develop new instruments in order to protect against discrimination on other grounds.

186. Measures to prohibit discrimination against disabled persons were not introduced until 1975, and there are still no express provisions covering the rights of the sick in relation to discrimination, save as regards medical services and medical attention.

187. In so far as people with AIDS may be regarded as disabled they are protected by the Declaration on the Rights of Disabled Persons adopted by the General Assembly of the United Nations on 9 December 1975, which contains the following provisions:

> "1. The term 'disabled person' means any person unable to ensure by himself or herself, wholly or partly, the necessities of a normal individual and/or social life, as a result of deficiency, either congenital or not, in his or her physical or mental capabilities.
>
> "2. Disabled persons shall enjoy all the rights set forth in this Declaration. These rights shall be granted to all disabled persons without any exception whatsoever and without distinction or

discrimination on the basis of race, colour, sex, language, religion, political or other opinions, national or social origin, state of wealth, birth or any other situation applying either to the disabled person himself or herself or to his or her family.

"3. Disabled persons have the inherent right to respect for their human dignity. Disabled persons, whatever the origin, nature and seriousness of their handicaps and disabilities, have the same fundamental rights as their fellow-citizens of the same age, which implies first and foremost the right to enjoy a decent life, as normal and full as possible." 36/

188. In this context, the work of Mr. Leandro Despouy, Special Rapporteur to the Sub-Commission on Human Rights and Disability, is of particular significance for the present study. 37/

189. Although discrimination on the grounds of ill-health is not specifically mentioned in international provisions, in its resolution 1989/11 the Commission of Human Rights considered the principle of non-discrimination in the field of health. In that resolution it reaffirmed that the principle of non-discrimination should apply in the field of health to all people in all circumstances. This resolution must be regarded as applicable to all people with HIV-infection and AIDS.

190. In resolution 1989/11 the Commission, inter alia:

"2. Recalls that all human rights must apply to all patients without exception and that non-discrimination in the field of health should apply to all people and in all circumstances;

"3. Recognizes the importance of the principle of non-discrimination concerning access to health care and encourages the World Health Organization to continue its action in that respect;

"4. Invites the Sub-Commission on Prevention of Discrimination and Protection of Minorities to examine, using the opportunity provided by the study on discrimination against persons with the human immunodeficiency virus (HIV) or suffering from acquired immunodeficiency syndrome (AIDS) envisaged in its decision 1988/11 of 1 September 1988, the possibility of extending the scope of such a study to other kinds of discrimination against sick or disabled persons, in consultation with the World Health Organization and giving Governments that wish to express their views the opportunity to do so." 38/

191. It is widely accepted that any form of discrimination on the grounds of HIV status is prohibited by international human rights norms. Moreover, it has been seen that in many instances, HIV- and AIDS-related discrimination is based on pre-existing racial, national, gender, and other prejudice, in which case, such discrimination constitutes a serious violation of human rights.

192. The principle of non-discrimination in the context of AIDS has been constantly re-emphasized in the resolutions of numerous United Nations and other international bodies. To quote a further example, the Council and

Representatives of the Governments of the member States of the European Communities meeting within the Council on 31 May 1988, stated that they:

> "(5) reaffirm in particular their commitment to the principle, inter alia:
>
> - any discrimination against, or stigmatization of persons affected by AIDS, particularly as regards employment, must be avoided."

193. In the United Kingdom a draft declaration of the rights of people with HIV and AIDS drawn up by self-help organizations of HIV-infected people, AIDS service organizations and non-governmental organizations, submits that HIV status and HIV-related disability should be regarded as falling within the "other status" covered by this prohibition of discrimination.

194. Discrimination on the grounds of sexual orientation is more controversial. The homosexual act is still illegal in a number of countries, but it can be argued that to discriminate against homosexuals in respect of their enjoyment of fundamental rights protected by international law, such as the right to work, access to health care, physical integrity and liberty, would amount to a denial of a substantive right and thus be prohibited by international law.

195. The discussions in the Committee on Economic, Social and Cultural Rights are interesting in this respect. Craven notes:

> "The approach of the Committee suggests that possible additional grounds exist under which discrimination is prohibited, such as health, nationality, disability, poverty, age and sexual orientation." 39/

196. Indeed, the Committee shows no signs of restricting itself to the enumerated grounds of discrimination when examining States parties' reports. At least one member has questioned States on discrimination against people with AIDS, and another has raised questions about discrimination against homosexuals. 40/

197. Discrimination against anyone for whatever reason offends human dignity and should be regarded as prohibited. Mrs. Daes has reminded us in her study on mental health that "there is no health in a society afflicted by racism and discrimination". 41/

198. As Seighart comments:

> "The primary characteristic which distinguishes 'human' rights is their universality: according to the classical theory, they are said to 'inhere' in every human being by virtue of his humanity alone. It must necessarily follow that no particular feature or characteristic attaching to any individual, and which distinguishes him from others, can affect his entitlement to his human rights, whether in degree or in kind, except where the instruments specifically provide for this for a clear and cogent reason - for example, in restricting the right to vote to adults, or in requiring special protection for women and children." 42/

199. The concluding statement of the Global Expert Meeting on AIDS: A Question of Rights and Humanity, held at the Hague from 21 to 24 May 1991 confirmed the participants' belief that "universally shared human values recognize that every man, woman and child is equal in worth and dignity irrespective of their nationality or status, including for example, personal circumstances, occupation, lifestyle, sexual orientation, or health status". Thus discrimination on any ground offends human dignity and rights.

200. The full application of the principle of non-discrimination in the context of the AIDS pandemic needs also to be considered in the light of a large number of other international legal texts. The following is a brief list of those with provisions or relevance, but is by no means a complete list: ILO Convention No. 111 Discrimination in Employment and Occupation; ILO Convention No. 158 Termination of Employment etc; ILO Convention No. 161 Occupational Health Services; ILO Convention No. 159 Vocational Rehabilitation and Employment (Disabled Persons); ILO Recommendation No. 169 Employment Policy; UNESCO Convention against Discrimination in Education.

2. Nature of discriminatory practice

201. It has been observed that despite the prominence given to the principle of non-discrimination in the International Covenants, neither defines "discrimination", nor delineates what would constitute discrimination. The Human Rights Committee has considered the meaning of the term "discrimination" contained in article 2 (1) of the ICCPR in its General Comment No. 18 of November 1989. In its view "discrimination" as used in the Covenant should be understood to imply any distinction, exclusion, restriction or preference which is based on any of the grounds listed, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms.

202. The Human Rights Committee concluded that not every differentiation of treatment would constitute discrimination, if the criteria for such differentiation were reasonable and objective, and if the aim were to be to achieve a purpose which was legitimate under the Covenant. But in the absence of a public health justification, it is difficult to see how any AIDS-related discrimination or distinction could be legitimate.

203. As we have seen, in some instances policies and measures which have been introduced in the context of AIDS may unintentionally have a discriminatory effect on some people. We have noted above that some public education messages or guidelines for blood donors may unwittingly promote discrimination against individuals or groups referred to as being associated with the risk of HIV infection. The question needs to be considered whether these policies are discriminatory in law. In other words, is it necessary that there was an intention to discriminate?

204. In the South-West African Case (Second Phase) Judge Tanaka considered the notion of discrimination in his dissenting opinion:

> "The arbitrariness which is prohibited means the purely objective fact and not the subjective condition of those concerned. Accordingly, the arbitrariness can be asserted without regard to ... motive or purpose". 43/

205. One of the injustices highlighted by the AIDS pandemic is the nature of inequalities both within and between nations. Equality is sometimes regarded as the positive formulation of the principle of non-discrimination. But there is a distinction between equality of treatment and equality of result. Further consideration needs to be given to this in the light of unequal access to health care and other societal resources, and to the differential access to drugs used to restrict progression of AIDS.

206. This issue is particularly important in the context of present and future drugs and a possible vaccine against HIV infection. The existing drugs are particularly expensive, and are virtually unavailable in less economically developed regions of the world. The obligation of rich countries to assist the developing world in this respect is paramount. The Charter of the United Nations provides that Member States should cooperate in meeting humanitarian needs, and as article 15 of ICESCR confirms, everyone has the right "to enjoy the benefits of scientific progress and its applications". The relationship of this issue to the right to development and to the wider aspects of discrimination in the context of AIDS needs further study.

207. Similarly, further attention needs to be paid to the whole issue of poverty in the context of AIDS. There is growing evidence to suggest that once HIV enters a community it spreads more rapidly among the poor, particularly in urban settings. This suggestion requires further research, and is also linked to the recognition that extreme poverty is itself associated with a denial of human rights. The progress report of Mr. Danilo Türk, Special Rapporteur on the Realization of Economic, Social and Cultural Rights 44/ is of particular relevance to this consideration.

208. As we have seen, the type of discriminatory practices relevant in the context of AIDS vary from discriminatory laws and policies, through activities of housing authorities, employers, insurance companies, and communities to unintended consequences of public health measures. These practices need to be analysed further in order to determine which are prohibited by international law.

209. In the Special Rapporteur's preliminary report three types of AIDS-related discriminatory practices where identified, those that led to:

(a) A denial of enjoyment of a recognized human right, for example, denial of the right to marry, or to return to one's own country;

(b) A restriction of the enjoyment of a recognized right, for example, restrictions on freedom of movement or association;

(c) A differential treatment, but which did not amount to a denial or restriction of a recognized human right, for example, restriction on entry into a foreign country.

210. There is little difficulty in postulating that any discrimation on the basis of HIV status or AIDS that falls into the first two categories abuses human rights, on the basis both of limitation on the enjoyment of the substantive right, and of respect for the principle of non-discrimination.

More difficulty arises with the third category. In this connection the opinion of the Human Rights Committee on equality before the law is helpful.

211. It will be recalled that article 26 of the International Covenant on Civil and Political Rights provides:

> "All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any grounds such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

212. In its General Comment No. 18 of November 1989, the Human Rights Committee commented that:

> "While article 2 limits the scope of the rights to be protected against discrimination to those provided for in the Covenant, article 26 does not specify such limitations. That is to say, article 26 provides that all persons are equal before the law and are entitled to equal protection of the law without discrimination, and that the law shall guarantee to all persons equal and effective protection against discrimination on any of the enumerated grounds. In the view of the Committee, article 26 does not merely duplicate the guarantee already provided for in article 2 but provides in itself an autonomous right. It prohibits discrimination in law or in fact in any field regulated and protected by public authorities. Article 26 is therefore concerned with the obligations imposed on States parties in regard to their legislation and the application thereof. Thus, when legislation is adopted by a State party, it must comply with the requirement of article 26 that its content should not be discriminatory. In other words, the application of the principle of non-discrimination contained in article 26 is not limited to those rights which are provided for in the Covenant."

213. As is indicated in the background document prepared for the International Consultation on AIDS and Human Rights:

> "This right derives from the principle of equal protection of the law without discrimination and prohibition of discrimination in law or in practice in any field regulated and protected by public authorities. It is thus concerned with the obligations imposed on States in regard to their legislation and application therefore.
>
> "There could be circumstances in which a law which discriminated against people with AIDS or HIV, or which gave them less protection than it gives to others, could constitute a violation of this right even if no other human right of the persons concerned were being denied or abridged as a result.
>
> "The areas to which this principle could be applied will vary from one country to another and will depend on the matters which are regulated by law, such as access to public housing or the granting of licences for various activities.

"It follows that an individual with AIDS or HIV may only be subjected to differential treatment in any field regulated and protected by law if it can be established that the distinction has a legitimate aim (i.e. an objective and reasonable justification) and that the means employed are proportionate to that aim.

"The only imaginable legitimate aim would be the protection of public health. However, public health experts throughout the world are on record as saying that this aim is best pursued by not discriminating against those who are infected with HIV, or people with AIDS." 45/

214. It is therefore difficult to see how discrimination against persons with AIDS or HIV-infected persons in respect of any of their legal rights, or differential treatment in any field regulated by public authorities could be justified as a measure proportionate to the legitimate aim of seeking to limit the spread of infection. Therefore, any such laws or public policies which provide for different treatment of HIV-infected people or people with AIDS may well be discriminatory within the context of international law.

3. Nature of obligation to respect the principle of non-discrimination

215. States may be regarded as under an obligation to avoid the introduction of new laws or policies which are discriminatory, and to repeal or amend as appropriate any existing laws or practices which offend the principle of non-discrimination. This duty with respect to the States' own acts or omissions, or those of a State authority is generally regarded as being of immediate effect. In other words, the State has an obligation to repeal or amend any such offending laws or practices immediately. 46/

216. However, the duty of States may go beyond mere avoidance of discriminatory law or practice, and require positive action on the part of the State. As the Human Rights Committee has commented with respect to articles 2 (1), 3 and 26 of the ICCPR, the prevention of discrimination

"requires not only measures of protection, but also affirmative action designed to ensure the positive enjoyment of rights. This cannot be done simply by enacting laws". 47/

217. The significance of this in the context of protection against AIDS-related discrimination requires further elucidation. Does it impose an obligation on States to provide legal redress against third party discrimination? Is there an obligation to provide public education on respect for the principle of non-discrimination, and to promote compassion, tolerance and solidarity?

218. Furthermore, it is also necessary to consider the responsibility of States to prevent discrimination by third parties. As we have seen, much AIDS-related discrimination is perpetrated by corporations, bodies and individuals whose actions are not the direct responsibility of the State. What obligation does the State bear to counter such discrimination?

219. The situation is somewhat clearer with respect to AIDS-related discrimination which also has a racial or sexual basis, as the relevant international texts require States parties to bring an end to racial and sexual discrimination by any persons, group or organization. 48/ But with regard to other aspects of AIDS-related discrimination the position is less clear. One view is that, at least as regards activities in the public sphere, States are under an obligation to restrict discrimination or stigmatization by third parties.

220. It appears that in this connection a distinction needs to be made between those activities by third parties which fall into the public sphere, and those of a purely personal or private nature.

221. Ramcharan concludes that:

> "certain types of discrimination by individuals, other than in personal and social relationships, would violate the guarantees of the Covenant and that a State party is under an obligation to take measures against such forms of discrimination". 49/

222. In reference to the International Convention on the Elimination of All Forms of Racial Discrimination, Meron notes:

> "While certain private and interpersonal associational relations would be insulated from the reach of the Convention, the activities of large private entitities and of basically unselective organizations would be regarded as publicly available goods and services." 50/

223. The Committee on Economic, Social, and Cultural Rights has also indicated concern for control of discrimination by the private sector. Members of the Committee have, for example, considered the operation of non-discriminatory norms in private sector employment and health care. 51/

224. Despite the need to distinguish between strictly personal activities and those that affect the enjoyment of the fundamental rights of others, for instance employment, housing and health care, AIDS-related discrimination impedes efforts to protect public health, and should therefore be considered as falling within the public domain.

225. Such an argument can be strengthened by considering also the State's obligation to protect public health. Since public health authorities and ministries of health agree that AIDS-related discrimination and stigmatization are harmful to public health, it could be argued that States are under a positive duty in law to ensure that individuals, corporations or any other body do not discriminate. The full effects of such an obligation clearly need to be further analysed. However, it is helpful in this regard to recall that States represented both at the London Summit and at the World Health Assembly have called upon States to counter discrimination and stigmatization in the context of AIDS, and to develop a supportive environment for those affected by this pandemic. For example, the World Health Assembly resolution which has been referred to several times is entitled "AIDS: avoidance of discrimination in relation to HIV-infected people and people with AIDS" and starts by urging WHO member States to "foster a spirit of understanding and compassion for

HIV-infected people and people with AIDS through information, education and social support programmes". 52/ Furthermore, in his statement to the General Assembly on 20 October 1987, the Secretary-General of the United Nations urged that Member States, in their effort to combat HIV/AIDS, not create new minorities and fashion new structures of discrimination.

226. In this context, acknowledgement must be given to the important contribution played by religious movements, non-governmental organizations and community-based support programmes in encouraging compassion for and solidarity with those affected by the AIDS pandemic.

4. Is there a need to develop and adopt new international legal provisions?

227. In the light of widespread discrimination in the context of AIDS, and the serious effect that this may have on the protection of public health, there have been a number of calls for the introduction of new legal provisions to protect individuals from this discrimination.

228. There was considerable discussion on this point amongst the participants at the International Consultation on AIDS and Human Rights. The participants considered the desirability in the current circumstances of HIV/AIDS, of the elaboration, by the Commission on Human Rights, of a relevant international instrument specifically addressed to the human rights problems raised by HIV/AIDS, including the need for measures to prevent and redress discrimination. The views of the participants differed on this issue. In summary, without exhausting the opinions expressed, those who opposed such an initiative expressed the views that:

(a) It would require the devotion of much time and resources in circumstances of urgency where there were already applicable provisions;

(b) It ran the risk of isolating HIV/AIDS from its proper conceptual setting as a matter of health care and social justice or as an illness or disability and of thereby promoting the further marginalization of persons with HIV/AIDS;

(c) It ran counter to the current tendency to resist the expansion of international human rights law, in order to allow concentration upon the implementation of the law already adopted, of which there was a great deal that was clearly applicable to HIV/AIDS; and that

(d) It ran the risk, by reopening debates on the specific topic of HIV/AIDS in the present circumstances, of undermining the welcome strategy of WHO concerning human rights and HIV/AIDS and providing an outlet for ill-informed fears and prejudice.

229. On the other hand, those who favoured such a course referred to the following considerations, among others:

(a) The existence of particular and specific international human rights instruments addressed to particular and specific problems of which HIV/AIDS is undoubtedly as important and challenging as many;

(b) The evidence of the benefit to the advancement of respect for human rights of the existence of human rights laws, both national and international;

(c) The stimulus given to the enactment and effective implementation of national and local or provincial laws and the adoption of policies by the achievements of international instruments dealing with particular issues of importance for human rights;

(d) The focus which such an instrument would provide to individuals and advocacy groups working towards preventing or redressing discrimination;

(e) The opportunity which such an instrument would present to strengthen the protection of the human rights of persons suffering from all forms of ill-health or disability;

(f) The assistance given to the national and local or provincial political process in the protection of the human rights of unpopular or stigmatized minorities by the existence of an instrument representing the consensus of the international community; and

(g) The probability that the challenges to human rights in the context of HIV/AIDS would become more pressing and serious with the global spread of the epidemic.

230. In the report of the Consultation the participants invited international, intergovernmental and regional bodies concerned, as well as national Governments, in the light of these considerations, to consider whether there was need for new human rights instruments concerning HIV and AIDS at the international and national levels. It is hoped that the present report and the final report to be submitted next year will assist the Sub-Commission in considering this important point.

5. Other conceptual issues that require further analysis

231. Discrimination permeates all aspects of life and it is clearly not possible in this report for the Special Rapporteur to do justice to the full implications of the legal provisions relating to the principle of non-discrimination. For example, isolation of people with AIDS might well constitute a form of administrative detention. This point needs to be further considered in the light of the work of Mr. Louis Joinet, Special Rapporteur in this field, and his report on the practice of administrative detention submitted to the forty-first session of the Sub-Commission (E/CN.4/Sub.2/1989/27).

232. In addition, there are other conceptual issues that require further analysis. One important aspect is the relationship between the rights of individuals to information about AIDS, the risks of HIV transmission and the means by which they might protect themselves, and religious and cultural rights and freedoms. In a number of multifaith and multicultural societies, Governments are facing difficulties in balancing their public health

obligation of providing AIDS education, with respect for religious and cultural sensitivities. As has been written in the context of Africa:

> "In order to be effective AIDS education needs to be explicit about the means of HIV transmission. This in turn requires a discussion of sexual matters which in most societies have traditionally not been discussed openly in public. In some local languages, since such matters are never discussed, there may not be appropriate words. Inevitably, AIDS education has raised religious and cultural sensitivities in African societies." 53/

233. Such debates are not new. Similar questions have arisen in the past concerning the promotion of family planning advice and access to contraceptives. In this context, it is worth recalling resolution 18 adopted by the International Conference on Human Rights, held at Tehran in 1968, which provides:

> "couples have a basic human right to decide freely and responsibly on the number and spacing of their children and a right to adequate education and information in this respect".

234. The Secretary-General of the United Nations was even more straightforward when he spoke in 1967 of the "right of every family to information and to the availability of services" in the field of family planning. 54/

235. Considerable debate is still taking place about the promotion of condoms as a prophylactic against HIV infection and other sexually transmitted diseases. Many religious leaders and others have expressed concern about the effects this promotion might have on traditional moral values. The views of a number of religions were dealt with in some depth in the background document prepared for the Global Expert Meeting, AIDS: A Question of Rights and Humanity. Its authors concluded:

> "In many instances, religious leaders have opposed the promotion of condom use on the grounds that it could be interpreted as condoning pre-marital and extra-marital sexual relations. The moral value placed upon marriage and the family unit in teachings of many of the world's faiths is thus offended by the promotion of condom use." 55/

236. Similar difficulties have occurred with respect to sex education in schools and for out-of-school-youth. Those who promote the view that AIDS education should be made available to the widest possible audience express concern that restricting AIDS education or condom availability to some people would itself be discriminatory. As Senator Gruening stated in a congressional hearing on assistance in the field of international family planning:

> "This is entirely a matter of freedom of choice, without compulsion, with complete respect for the views of the individual, his religious inhibitions, and it is merely a matter of making knowledge available, it is mainly an exercise in freedom of speech, freedom of thought and freedom of information." 56/

237. At the same hearing it was asked "how can you justify withholding such important and useful information as birth control from the poor and disadvantaged who want to have it?" 57/

238. These points raise sensitive issues. The respect for fundamental human rights imposes obligations on States to protect public health, but it is important that AIDS prevention policies are not regarded as infringing religious and cultural freedoms. The protection of public health and respect for religious and cultural integrity should by no means be considered mutually exclusive. As Hausermann writes:

> "It is certainly true that different religions, societies and civilizations have developed social and moral codes which differ in many respects. Indeed, we might regard it as a characteristic of this century that, rather than seeking to impose a single homogenous culture or value system on the world, the community of nations has adopted the principle of respect for this diversity and plurality.
>
> "Is it therefore true to talk of a concept of 'universal human values'? The Universal Declaration of Human Rights reflects an attempt to sythesize those values which are common to cultures and religions throughout the world. It was proclaimed as a common standard of achievement for all people and nations.
>
> "But its adoption does not imply the imposition of a rigid set of value systems on all cultures. Rather, it stresses respect for human dignity and self realization that underlies most value systems in the modern global community. It is in this spirit of recognizing common values and principles that the human rights debate can assist us in responding to AIDS." 58/

III. ADDRESSING DISCRIMINATION RELATING TO HIV AND AIDS

239. It has been seen that HIV/AIDS is far more than a health issue. The AIDS pandemic, and in particular discrimination relating to it, have been shown to have far-reaching consequences for both personal and social life. In view of this, it is suggested that addressing discrimination relating to HIV and AIDS requires a multidisciplinary and multilevel approach, with maximum involvement of people in all regions of the world.

240. During the course of the first 10 years of the epidemic, a number of initiatives have been taken, often with considerable success, to prevent or reduce the incidence of discrimination relating to HIV and AIDS. Some of the steps that have been taken are considered below. The survey is by no means comprehensive, but indicates the diversity of effective approaches which can be taken to prevent discrimination relating to HIV and AIDS.

A. International level

241. The international community has recognized that AIDS is a global problem which requires a coordinated global response. This response is provided by the Global Strategy for Prevention and Control of AIDS, adopted by the World Health Assembly and endorsed by the General Assembly of the United Nations.

1. World Health Organization

242. The World Health Organization, the United Nations agency with responsibility for the implementation of the global AIDS strategy, has been working since 1987 on the development of programmes and measures to prevent the spread of HIV and to address the consequences of the pandemic.

243. Promoting non-discrimination in the context of HIV and AIDS has been a high priority for the World Health Organization. The Director of the WHO Global Programme on AIDS (WHO/GPA), Dr. Michael Merson, has stated on a number of occasions that countering such discrimination is a priority of the Programme, and numerous initiatives have been taken in order to assist other agencies and organizations to address this matter effectively.

244. The importance of promoting non-discrimination as an essential part of the Global AIDS Strategy was recognized in January 1988 by the World Summit of Ministers of Health on Programmes for AIDS Prevention. The London Declaration, which was passed at the Summit, emphasizes "the need in AIDS prevention programmes to protect human rights and human dignity. Discrimination against, and stigmatization of, HIV-infected people and people with AIDS and population groups undermine public health and must be avoided".

245. The importance of promoting non-discrimination as an essential part of the global AIDS strategy was confirmed by the World Health Assembly in May 1988. In its resolution WHA 41.24 it specifically requested the Director-General of WHO, inter alia:

> "To take all measures necessary to advocate the need to protect the human rights and dignity of HIV-infected people and people with AIDS, and of members of population groups;

"To collaborate with all relevant governmental, non-governmental and international organizations and voluntary bodies in emphasizing the importance to the global strategy for the prevention and control of AIDS of avoiding discrimination against HIV-infected people and people with AIDS;

"To stress to Member States and to all others concerned the dangers to the health of everyone of discriminatory action against and stigmatization of HIV-infected people and people with AIDS, and members of population groups, by continuing to provide accurate information on AIDS and guidance on its prevention and control."

246. WHO/GPA is fulfilling its mandate to reduce and prevent discrimination in the context of HIV and AIDS through a variety of complementary strategies. It has held a series of expert meetings on several issues which have a bearing on the issue of discrimination, and ensured that in each of these meetings, discrimination has been addressed directly and effectively. Over the past four years, expert meetings have been held on issues including AIDS and the workplace, international testing of candidate HIV vaccines, partner notification for preventing HIV transmission, AIDS and prostitution, AIDS and prisons, HIV screening programmes, screening international travellers for HIV and research priorities relating to women and AIDS.

247. In keeping with resolution WHA 41.24, WHO has taken a lead in encouraging Governments to reconsider legislation, where it exists, which discriminates against HIV-infected persons and people with AIDS. WHO/GPA is engaged in a systematic study of all existing HIV- and AIDS-related restrictions on international travel. In this connection, WHO has re-examined its sponsorship of conferences on HIV and AIDS in those countries with restrictions on the short-term travel of infected persons, and has taken the decision not to participate in conferences which are held in countries that have such restrictions.

248. In addition, GPA is collaborating closely with the WHO Health Legislation Unit in monitoring and analysing all developments relating to health legislation pertaining to HIV and AIDS. Another recent initiative undertaken by WHO/GPA has been the efforts to tailor health care and other services to the particular needs of women, so as to ensure that traditional forms of discrimination against women do not militate against HIV prevention and care efforts.

249. A large part of WHO/GPA's work in the area of HIV- and AIDS-related discrimination focuses on the provision of assistance to national AIDS programmes. Collaboration with national coordinating bodies on AIDS prevention has increasingly included expert assistance to address numerous ethical and discrimination-related problems that have emerged in the design and implementation of national programmes. Support provided to countries has included information on relevant international principles and policies, as well as on innovative and effective solutions that some countries have developed as possible models for addressing the problem of HIV- and AIDS-related discrimination.

WHO/GPA collaboration with other international agencies

250. Although WHO/GPA provides a central focus for global efforts to address HIV- and AIDS-related discrimination, the mandates of many other United Nations bodies and agencies also imply responsibility for particular aspects of the AIDS pandemic, and thus justify a programme of active involvement.

251. The breadth of the issues raised by the AIDS pandemic ensures that nearly all United Nations agencies have some role to play in tackling AIDS and its consequences. Their involvement in policies and programmes aimed at combating discrimination can only strengthen the partnership which supports the WHO-coordinated Global Programme on AIDS.

252. Accordingly, in its resolution 42/8 of 26 October 1987, the General Assembly confirmed that WHO should continue to direct and coordinate the urgent global battle against AIDS, but requested the Secretary-General to ensure a coordinated response by the United Nations system to the AIDS pandemic, under the leadership provided by WHO. In that resolution it urged all appropriate organizations of the United Nations system, including the specialized agencies, bilateral and multilateral agencies and non-governmental and voluntary organizations, in conformity with the Global Strategy, to support the worldwide struggle against AIDS.

253. Not only is the international community rising to these challenges with unprecedented speed and commitment, but the dramatic attention focused on AIDS is creating an opportunity to renew with increased vigour efforts to solve some of the underlying social problems thrown into sharp focus by the disease, such as racism, intravenous drug use, inadequate education and health facilities, and the insufficiency of social security insurance.

254. Coordination of international efforts is facilitated through the United Nations Steering Committee, chaired by the Under-Secretary-General for International Economic and Social Affairs, through the Standing Committee of United Nations AIDS Focal Points convened by the United Nations Development Programme (UNDP), and through the Interagency Advisory Group (IAAG), established by WHO with the support of the Administrative Committee on Coordination (ACC) to oversee the AIDS activities of the United Nations system.

255. On 5 April 1991 ACC adopted a document on principles and strategies regarding the impact of HIV and AIDS on United Nations personnel and operational policy. The principles provide, inter alia, that HIV infection does not, in itself, constitute a lack of fitness to work; there will be no HIV screening of candidates for recruitment; HIV infection or AIDS should not, of itself, be considered a basis for termination of employment; and United Nations staff with HIV or AIDS should enjoy health and social protection in the same manner as other United Nations employees suffering from serious illness.

256. In July 1988, the WHO Global Programme on AIDS commissioned a three-week survey by a consultant to prepare a report with the following terms of reference:

(i) To identify those United Nations agencies or other international bodies which:

(a) Are concerned with non-discrimination and are either playing or could be encouraged to play a role in combating AIDS-related discrimination;

(b) Have existing programmes or policies on AIDS based on the principle of non-discrimination; or

(c) Might be encouraged to implement such programmes or policies.

(ii) To make proposals to GPA for the development of strategies aimed at combating AIDS-related discrimination.

257. The survey highlighted that, in addition to the United Nations human rights bodies, several other United Nations agencies have relevant mandates relating to the avoidance of discrimination. For example, the International Labour Organisation has long taken a lead in combating discrimination in employment, and UNESCO has been similarly concerned with reducing discrimination in the fields of education, culture and information. The following section draws on the findings of the survey and subsequent developments.

2. United Nations Centre for Human Rights

258. Many expert meetings which have addressed HIV- and AIDS-related discrimination have been held in consultation with other United Nations agencies. Of particular relevance is the multidisciplinary International Consultation on AIDS and Human Rights which was organized by the United Nations Centre for Human Rights with the technical and financial support of WHO/GPA. The Consultation brought together experts in the fields of law, religion, ethics, human rights, public policy and public health to discuss aspects of human rights relating to the AIDS pandemic, including various forms of discrimination in the context of HIV and AIDS. The deliberations and conclusions of the Consultation have proved to be of considerable value to efforts at promoting non-discrimination, and have been drawn upon extensively in the preparation of this progress report.

259. The Consultation, which was held at Geneva in July 1989, represented one element in the growing concern of the Centre for Human Rights with HIV- and AIDS-related discrimination and related human rights issues. In 1988 the Secretary-General requested the Centre to start collecting information on HIV/AIDS-related legislation and practices of countries, particularly on discrimination and the dangers which it entails. Moreover, in its role as secretariat to the human rights treaty bodies the Centre has paid increased attention to HIV and AIDS. A briefing on HIV/AIDS was held at the meeting of

all the chairpersons of the human rights treaty bodies in October 1988. A growing number of States' reports on the right to health, submitted under the International Covenant on Economic, Social and Cultural Rights have addressed issues relating to national AIDS policies, practices and laws. In addition, the Centre's programme of advisory services and technical assistance in human rights has recently been expanded to include the subject-matter of HIV, AIDS and human rights.

3. United Nations Development Programme (UNDP)

260. The WHO/UNDP alliance, which has been in operation since 1988, aims to coordinate support for national AIDS control and prevention programmes from all external partners including those in the United Nations system, and to organize resource mobilization meetings in collaboration with Governments.

261. UNDP has assisted in the integration of national AIDS plans with overall developmental policies and priorities at national level, and has assisted Governments to minimize the impact of HIV and AIDS on social and economic development. Recently, with technical assistance from WHO, UNDP has embarked on a new initiative, the aims of which include the strengthening of Governments' capacity to respond to the pandemic. Of particular relevance in the context of HIV- and AIDS-related discrimination is the emphasis, within this initiative, on the development of mechanisms to enhance prevention, care and support programmes for women.

4. United Nations Children's Fund (UNICEF)

262. As the problem of HIV and AIDS among children has increased over the last few years, so too has collaboration between WHO and UNICEF. They are collaborating closely in a study of the pandemic's impact on children of HIV-infected parents. As part of a wider effort to prevent stigmatization, discrimination, and social exclusion of people affected by HIV and AIDS, UNICEF and WHO have begun to develop a joint strategy for promoting an effective community response to the need for care and support for children orphaned or made vulnerable as a result of AIDS.

5. United Nations Educational, Scientific and Cultural Organization (UNESCO)

263. UNESCO and WHO are currently collaborating in the establishment of an international network of AIDS health promotion resource centres. This will provide a valuable opportunity to ensure that information and education on non-discrimination reaches a wider audience.

264. UNESCO's considerable experience in the field of education and awareness building provides an invaluable asset in efforts to prevent discrimination in the context of HIV and AIDS. The organization's expertise in facilitating communication and education at all levels, and in all cultural contexts, is of particular value in view of the complexity of HIV and AIDS.

265. The respective expertise of UNESCO and WHO proved particularly complementary during a recent joint consultation on school education for

the prevention of AIDS in Asia and the Pacific, which provided the first opportunity for high-level officials from ministries of health and education to meet and discuss their strategies in this field.

6. Collaboration with international organizations working for the advancement of women

266. In 1989, the United Nations Centre for Social Development and Humanitarian Affairs and the World Health Organization collaborated in commissioning a report on the effects of AIDS on the advancement of women. 59/ The report, prepared for the thirty-third session of the United Nations Commission on the Status of Women, held at Vienna in March 1989, led to the inclusion of this subject as a priority theme for 1993-1997 by the Commission at its thirty-fourth session in March 1990.

267. In January 1990, the Committee on the Elimination of Discrimination against Women adopted General Recommendation No. 15 (ninth session, 1990) entitled "Avoidance of discrimination against women in national strategies for the prevention and control of acquired immunodeficiency syndrome (AIDS)" in which it recommended, inter alia:

> That programmes to combat AIDS should give special attention to the rights and needs of women and children, and to the factors relating to the reproductive role of women and their subordinate position in some societies which make them especially vulnerable to HIV infection;
>
> That State parties ensure the active participation of women in primary health care and take measures to enhance their role as care providers, health workers and educators in the prevention of infection with HIV;
>
> That all States parties include in their reports under article 12 of the Convention information on the effects of AIDS on the situation of women and on the action taken to cater to the needs of those women who are infected and to prevent specific discrimination against women in response to AIDS.

268. Also in 1990, the forty-third World Health Assembly adopted resolution 43.10, which urges Member States, inter alia, to "strengthen the involvement of women by including in national AIDS Committees a representative of women's organizations and by enhancing women's social, economic and legal status through income-generating activities, so that they may participate fully in AIDS control programmes at all levels".

269. In addition, the Paris Declaration on Women, Children and the Acquired Immunodeficiency Syndrome (AIDS), which was adopted at the International Conference on the Implications of AIDS for Mothers and Children, held in Paris from 27 to 30 November 1989, appealed to all agencies in the United Nations system, Governments and non-governmental organizations, the scientific community, health and social professionals and the public at large, inter alia, to:

> Enhance the role of and the social, economic and legal status of women and children;

Ensure full participation of women in AIDS programmes at all levels;

Respect the human rights and dignity of women and children, including those who are HIV-infected;

Emphasize the need to prevent stigmatization and discrimination against people with HIV infection/AIDS and those at risk, in all areas of life and for all services, including school; and

Recognize the crucial role of women in the Global AIDS Strategy and to accelerate the process of empowerment of women against AIDS.

B. Regional level

1. Council of Europe

270. One of the regional organizations that has made particularly important contributions to the prevention of discrimination and the protection of human rights in the context of HIV and AIDS is the Council of Europe. The Council of Europe is a 25-member intergovernmental body, with a secretariat based in Strasbourg, France.

271. In November 1983, the Committee of Ministers of the Council of Europe drew attention, for the first time at international level, to certain aspects of discrimination and stigmatization in the context of HIV and AIDS.

272. In 1987, the Committee of Ministers adopted Recommendation No. R(87)25, Concerning a Common European Public Health Policy to Fight the Acquired Immune Deficiency Syndrome. This carefully outlines, in the light of differing sociocultural contexts, a public health policy approach for the prevention of HIV transmission by drawing up a comprehensive strategy consisting of programmes and measures which:

(a) Are scientifically justified and expedient to impede the spread of HIV with a view to the protection of the health of citizens; and

(b) Do not interfere unnecessarily with their individual rights to objective information, freedom and private life.

273. The Recommendation declares that "discriminatory measures such as control at borders, exclusion of carriers from schools, employment, housing, etc. should not be introduced as they are not justifiable either scientifically or ethically".

274. In 1989 the Committee of Ministers expanded upon its 1987 position with a new Recommendation on Ethical Issues Relating to HIV Infection in Health Care and Social Settings (Recommendation No. R(89)14) and noted, inter alia, that "respect for the human and social rights of HIV-infected individuals and patients with AIDS is crucial for the success of a preventive public health policy". The recommendation declares as unacceptable: compulsory screening, restrictions on freedom of movement, quarantine, refusal by health-care

professionals to care for HIV patients, discrimination against HIV-infected persons in education, housing, health care and social services, breaches of confidentiality, and screening for group insurance policies.

275. The Council of Europe Parliamentary Assembly Recommendation 1116 (1989) (1) on AIDS and Human Rights recommends the strengthening of the European Convention on Human Rights in the context of HIV and AIDS, either by adding health to the prohibited grounds of discrimination, or by drawing up a general declaration on equal treatment by the law.

2. European Communities

276. Within the 12-member European Communities, there have been a number of significant developments relating to the promotion of non-discrimination in the context of HIV and AIDS. Of particular significance is the Resolution on the Fight Against AIDS, passed by the European Parliament in May 1989, which, inter alia, calls on Member States and the European Commission to take measures "ensuring compliance with existing laws and measures against discrimination on the grounds of race, sex, sexual orientation, etc. and where necessary, introducing new laws and regulations to prohibit and prevent discrimination against people who are HIV carriers or suffering from AIDS".

3. WHO regional activity

277. Since the submission of the preliminary report by the Special Rapporteur to the forty-second session of the Sub-Commission, WHO has given further attention at the regional level to the implementation of resolution WHA 41.24 adopted in May 1988. 60/

278. Four regional consultations on ethical, legal and human rights aspects of HIV/AIDS have been organized, the first in Brazzaville in March 1990, the second in the Republic of Korea in July 1990, the third in Chile in October 1990, and the last in New Delhi in October 1990. Specific issues for each region were discussed and agreement was reached on regional priorities and on follow-up activities.

279. The conclusions and recommendations of the Regional Conference on AIDS and Human Rights, held at Brazzaville from 12 to 16 March 1990 included the following:

> 1. HIV screening of foreigners as a condition for entry into a country and detention of HIV-infected persons are not in accordance with the current scientific knowledge about AIDS and constitute a form of discrimination and a restriction of human rights;
>
> 2. Work is a fundamental human right and therefore all forms of discrimination ought to be eliminated. HIV testing should not be a condition for employment. A medical certificate should only determine the ability or the inability of the candidate to perform the work required; the reason or inability should remain a medical secret and should not be revealed to the employer or any other party;

3. HIV testing should not be required as a condition for insurance. Insurance companies should not adopt or follow discriminatory policies. Persons whose health is impaired as a result of HIV infection (persons with AIDS) should be treated as those with similarly impaired health.

280. It is anticipated that the reports of these meetings will be published soon. This will enable reference to be made to the conclusions of the meetings in the author's final report.

4. Commonwealth Secretariat

281. The Commonwealth Secretariat has played an important role in sensitizing the 48 members of the Commonwealth to the human rights dimensions of the AIDS pandemic. With support from WHO, the Commonwealth Secretariat has organized a series of workshops which have addressed the social and ethical aspects of HIV and AIDS in Africa. In 1990, the Commonwealth Secretariat commissioned an in-depth study of public health programmes for the prevention and control of AIDS in the context of the frameworks provided by human rights and ethical principles which identifies those issues of primary practical significance to African Governments. 61/ The study considers how best Governments might address the social consequences of AIDS, for the individual, the family, communities and society at large. It also summarizes the main ethical and social issues on which consensus has been reached at the African level, and highlights those issues which may require further analysis and discussion.

282. In addition, the Commonwealth Secretariat has focused on the issue of AIDS and travel, in particular through its "AIDS and Human Movement" meeting, which was held in London in June 1990. The report of the meeting emphasizes that there is no public health rationale for discriminating against international travellers on the grounds of HIV or AIDS.

5. International non-governmental organizations

283. As noted by the World Health Assembly in its resolution WHA 42.34, adopted in May 1989, non-governmental organizations (NGOs) play a key role in efforts to prevent HIV transmission and to care for people with AIDS. A particularly important area of NGO work concerns efforts to reduce and prevent discrimination relating to HIV and AIDS. In addition to providing a supportive environment for people with HIV infection and people with AIDS, for example through the provision of counselling and hospices for those who are very ill as a consequence of AIDS, a number of NGOs have drafted standards and adopted declarations of particular significance in the context of non-discrimination.

284. The International AIDS Society, which was founded in 1988, adopted a declaration on the first World AIDS Day (1 December 1988) entitled "Scientists against Discrimination", which condemns discrimination against people infected with HIV and people with AIDS in the provision of services, employment and travel, and emphasizes the importance of the protection of human rights to the success of local and national AIDS programmes.

285. Similarly, the Declaration of Basic Rights of Persons with HIV/AIDS was adopted by the Organizing Committee of the Latin American Network of Community-based NGOs Fighting AIDS. At the same time, a consortium of NGOs in the United Kingdom have drafted a Declaration of the Rights of People with HIV and AIDS and it has been suggested by one commentator that the impact of this Declaration may include the introduction of legislation aimed at combating HIV- and AIDS-related discrimination in the United Kingdom. 62/

286. In May 1991 the International Association of Rights and Humanity, in association with the University of Limburg, held a consultation entitled AIDS: A Question of Rights and Humanity, which brought together human rights lawyers, public health experts, ethicists and theologians of different faiths to discuss the principles of human rights, ethics and humanity which should guide all programmes and action relating to HIV and AIDS. The meeting established broad agreement on a number of points regarding these principles, which may be of utility in guiding national and local AIDS programmes.

C. National level

287. A great deal of activity has been conducted at the national level with regard to the promotion of non-discrimination relating to HIV and AIDS. This activity has been carried out by a variety of national bodies, and has often benefited from a multisectoral approach, involving governmental and non-governmental agencies with expertise in areas that include health, education, information, justice, science, tourism and economics.

288. There is a growing recognition at the national level that effective policies for HIV prevention and AIDS care must promote non-discrimination and include mechanisms for the protection of human rights. It is in this context that human rights experts and representatives of women's organizations and AIDS service organizations have been appointed to a number of national AIDS committees.

1. National AIDS programmes

289. Many national AIDS programmes recognize the need to place high priority on the protection of human rights if they are to be effective in protecting public health. A number of national AIDS programmes have produced guidelines, for example on screening for HIV, which have stressed the importance of non-discrimination. In addition, many national AIDS programmes have used the opportunity provided by World AIDS Day each year, to publicize messages relating to the need for compassion and respect for the human rights and dignity of people affected by HIV and AIDS.

290. In Comoros, the National AIDS Control Committee established by an Order in November 1988 is stated to be responsible for ensuring the protection of citizens' rights and respect for the specific sociocultural features of the country in the formulation and implementation of the AIDS Control Programme.

291. The National Multidisciplinary Committee on AIDS Prevention established in Senegal by an Order in February 1990 includes a Consultative Group on Ethical and Legal Matters and Research. Similarly, the National AIDS Control Committee of Niger includes a Subcommittee on Ethics.

292. WHO/GPA is currently developing a training course for AIDS programme managers which will include sections on policy setting, strategy and intervention definition and prioritization, target setting, planning, monitoring and evaluation. It is expected that issues relating to human rights and non-discrimination will be integrated into the different components of the course, and that programme managers will be trained on how to approach human rights issues in the monitoring and evaluation of national AIDS programmes.

2. Legal framework

293. A number of Governments have used the law as a means of promoting non-discrimination relating to HIV and AIDS. The use of law in this context varies: in some cases, Governments have introduced protective laws; elsewhere, laws which have been found to be discriminatory have been repealed; in yet other cases, existing laws have been adapted and improved with regard to preventing discrimination in the context of HIV and AIDS.

(a) Introduction of protective laws

294. The survey of legal instruments dealing with HIV and AIDS produced by the WHO Health Legislation Unit in collaboration with GPA provides a number of examples of protective laws which have been introduced in the context of HIV- and AIDS-related discrimination. 63/

295. In Costa Rica, for example, the Ministry of Justice is required by law to ensure that persons detained in the national prison system are not stigmatized by reason of their sexual orientation, lifestyle or serostatus.

296. In Luxembourg, a regulation passed in 1989 includes provisions which specify that there is to be no exclusion of HIV-infected schoolchildren or children living in "infected homes".

297. In 1989 the Assembly of the Socialist Federal Republic of Yugoslavia outlined measures to control and prevent AIDS which included recommendations regarding respect for the human rights and dignity of people infected with HIV and people with AIDS.

298. And in France, a law was introduced in 1990 on protection against discrimination on account of state of health or disability.

(b) Repeal of discriminatory laws

299. The repeal of discriminatory legislation is illustrated by the case of Costa Rica, which issued a decree in 1987, one section of which required all crew members of ships docking in the country's ports to provide a certificate indicating that they were not infected with HIV. Persons not complying with this requirement were not permitted to disembark, and were subject to quarantine. This section was repealed in June 1988.

300. In the United States, regulations became effective in January 1989 which eliminated a previous requirement that a laboratory retain indefinitely the name and other identification of individuals undergoing testing for HIV antibody or causative agent.

(c) Adaptation and improvement of existing laws

301. The Republic of Korea passed a law in 1987 which addressed a number of issues relating to the AIDS pandemic, including: notification and reporting; screening; isolation and surveillance of infected persons; supplementary provisions; and penal provisions. This law was amended in 1989 to include the requirement that the human rights and dignity of HIV-infected people are to be respected.

3. Development of strengthened ethical principles for professionals

302. It has been noted above that the medical profession is governed by a set of ethical principles which impose obligations on health professionals to care for all patients without discrimination and to respect the autonomy and confidentiality of patients. Codes of professional ethics have been developed throughout the world, not only by physicians but also by dentists, nurses, midwives, social workers and others whose work may bring them into direct and regular contact with people affected by HIV and AIDS.

303. The AIDS pandemic has shown that not all professionals observe their respective codes of ethics in the practice of their work. This may be for any of a number of reasons, including fear or ignorance of the means of HIV transmission, moral judgements, racism or other forms of prejudice.

304. Consideration might be given to supporting professional groups in the observance of ethical principles through, for example, national-level consultations in which such principles are discussed and reaffirmed specifically in the context of HIV and AIDS.

305. In addition, national organizations, including Governments, might consider introducing machinery, where it does not already exist, through which individuals might lodge complaints and seek redress where they have been treated unethically by a professional.

4. Public education

306. Considerable effort is being made at the national level in all regions of the world to provide and support public education which encourages non-discrimination. Experience has shown that educational projects aimed at preventing HIV transmission are most successful where they are based on a recognition of the inherent dignity of the members of the target group. Projects are also likely to be most effective where members of the population concerned are actively encouraged and empowered to design and implement their own educational projects.

307. The opportunities for public education are wide-ranging, and vary from country to country, according to financial resources, the nature of the mass media, social norms and cultural traditions.

308. Strategies which have been adopted include, for example, the use of law. In the Soviet Union, for instance, a resolution was passed in 1990 making television and radio authorities responsible for the inculcation in the population of a compassionate attitude towards HIV-infected people and people with AIDS.

309. In several countries, extensive use of posters has been made to promote messages such as: "Don't discriminate: AIDS doesn't" and "I have AIDS: Hug me".

310. In a number of cases, World AIDS Day has provided a focus for public information and education stressing the importance of unity in the effort to prevent the spread of HIV and care for people with AIDS. The mass media, posters, leaflets, dramatic performances, essay writing competitions, sports events and other means have been used to put across this message.

311. In many cases, non-governmental organizations have often taken great initiative in developing public education and campaigning strategies which aim at preventing discrimination and promoting understanding, tolerance and compassion. In the United States, corporate leaders have formed an organization called the National Leadership Coalition on AIDS, which is urging corporations in the country to adopt humane policies towards people infected with HIV and people with AIDS. 64/

312. In another instance, non-governmental organizations have collaborated in the production of a video which addressed the issue of HIV- and AIDS-related discrimination. 65/

313. In many countries, the mass media disseminate information on HIV and AIDS. At times the media, including the press, radio and television, have been a positive force, drawing attention to the extent of the pandemic, and also highlighting the "human face" of AIDS.

314. However, concern has been raised by the all-too-frequent cases of sensationalism and offensive coverage of the pandemic by the media. This has served to increase people's fears of HIV infection, which has in turn led to increased discrimination against people affected by HIV and AIDS.

315. It is important that the media, as well as other institutions which have the capacity to influence public understanding and perceptions, provide education regarding the importance of compassion, tolerance and non-discrimination, in a manner which is consistent with existing cultural traditions and social values.

316. Education in non-discrimination applies not only, for example, to the compassionate and respectful portrayal of people affected by HIV and AIDS. There are more subtle, but equally important, aspects which demand the attention of educators. For example, there are frequent references made in the mass media, as elsewhere, to "AIDS victims", "AIDS sufferers", "AIDS patients" and "risk groups". Such terms are in many cases offensive, and are often inaccurate references to what is being described.

317. The terms "AIDS victims" and "AIDS sufferers" are suggestive of the "civil death" to which many people with AIDS are sentenced. These terms imply that people with AIDS are helpless victims who are not in control of their lives, and that they are so debilitated that they cannot participate fully in social life. This is not a fair portrayal of people with AIDS, who are often active and productive members of society with a great deal to offer society and teach to others.

318. Similarly, people with AIDS are sometimes referred to as "AIDS patients". This may be an accurate term when it relates to people with AIDS in the context of medical treatment. However, it is often regarded as inappropriate to use the term "AIDS patient" when referring to a person with AIDS who is not in hospital, for example, in the context of being an employee, colleague, home owner, parent, or other social actor.

319. The term "risk group" has already been considered earlier in this progress report. References to "risk groups" are both inaccurate and dangerous for public health. This is because there is nothing inherent in a population group which places them at risk of HIV infection. Rather, HIV infection is transmitted through individual behaviour over which virtually each individual has control. To suggest that only certain "groups" are at risk of infection may lead people who do not identify with these groups into a false sense of security that they are in some way "immune" to infection, regardless of their behaviour.

D. Local level

320. In many instances, efforts to promote non-discrimination are most effective when they are devised and implemented at the local level. Organizations and individuals who have close contact with their target audience are most likely to understand the attitudes, fears and misunderstandings which underlie discrimination, and consequently they will be better able to overcome these barriers to tolerance, compassion and non-discrimination.

1. Local-level legislation

321. In certain areas, AIDS-specific legislation has been passed on a State, province or local level, specificially prohibiting HIV- and AIDS-related discrimination.

322. In the United States, for example, this approach has been adopted in the city of San Francisco. By contrast, in New York City existing disability laws have been considered sufficient for addressing HIV- and AIDS-related discrimination. Indeed, it has been argued that it may be counter-productive to remove AIDS from the context of other disabilities as this could reinforce the stigma already sometimes attached to HIV and AIDS. In certain areas of the United States, special units have been established within human rights agencies, to work specifically on enforcing anti-discrimination laws relating to HIV and AIDS, and on responding to complaints relating to such discrimination.

323. In most cases, the AIDS discrimination units do not resort to the traditional methods of complaint investigation which are relied upon by other units within human rights agencies. This is primarily because traditional methods which are based on litigation entail lengthy administrative procedures and substantial investments of time by those filing complaints. People with AIDS, who may face death within months or a few years, cannot afford to follow such procedures, which can take many years.

324. In this context, many AIDS discrimination units have developed and adopted approaches which attempt to prevent or reverse acts of discrimination without resorting to litigation. In the experience of the oldest and largest AIDS discrimination unit in the United States, 85 per cent of all cases can be resolved in less than 30 days without having to resort to litigation. Instead, the unit utilizes mediation, advocacy, education, research and, in a minority of cases, threatened or, occasionally, actual litigation in order to achieve a reduction in HIV- and AIDS-related discrimination. 66/

325. Nevertheless, although the AIDS discrimination units make every effort to avoid litigation, they are firmly committed to the existence of anti-discrimination law, which is regarded as essential to the success of their efforts to reduce discrimination.

> "Because such laws promote an environment of societally-sanctioned tolerance, merely advising an employer, landlord or service provider that it is illegal to take action against an employee, tenant or customer because of his or her HIV status or AIDS diagnosis often provides sufficient impetus to resolve the matter informally (i.e. without resorting to legal means)." 67/

326. Moreover, the existence of anti-discrimination law both justifies and enhances training and education in anti-discrimination in workplaces, housing associations, community groups, and so on.

327. Perhaps the greatest benefit of anti-discrimination law is its potential complementarity with programmes of information and education on HIV and AIDS. Experience to date suggests that sustained programmes of information and education on HIV and AIDS, combined with the existence of appropriate anti-discrimination legislation, are effective in reducing levels of HIV- and AIDS-related discrimination. In other words, while priority is given to informing and explaining to target groups that HIV is transmitted in limited ways, and that people infected with HIV, or who may be infected, have valuable social contributions to make, where such information and education fail to bring about a reduction in discrimination, the target groups are informed that discrimination is prohibited by law.

2. Workplace strategies

328. In a number of cases, strategies have been developed in places of work which encourage employees and employers to adopt non-discriminatory policies and practices. In some countries, trade unions have been particularly active in the development of such strategies, and they have been found to be most

effective where they have been able to work in collaboration with employers' representatives. In addition, as noted above, corporate leaders have also taken initiative in protecting the right of HIV-infected workers.

3. Religious organizations

329. Religious groups have in many instances offered spiritual and material assistance to people affected by HIV and AIDS, and in so doing they have set an example to others. All of the major faiths of the world emphasize the values of love, compassion, tolerance and the avoidance of harm to others. Religious leaders of many different faiths have spoken publicly of the importance of helping those in need, often with direct reference to people affected by HIV and AIDS. Regardless of differing views relating to prevention of HIV transmission, there is a wide consensus on the need to avoid discrimination against people who are infected or who have AIDS.

4. Community-based organizations and AIDS service organizations

330. Community organizations, and in particular - although not exclusively - AIDS service organizations, have also been effective in reducing discrimination. Often they are most effective by teaching through example: by integrating people affected by HIV and AIDS in their work, they have shown others that people affected by HIV and AIDS are entitled to the same rights and dignity as others.

331. A strategy adopted by one AIDS service organization which proved to be particularly effective involved AIDS education in schools. The organization arranged for people with AIDS to go to classrooms to talk about their experience of having AIDS, and to answer questions raised by schoolchildren relating to HIV and AIDS. Reports from the schoolchildren involved in this project were extremely frank and open. They indicated that prior to meeting the person with AIDS in their classroom they had harboured a number of fears and anxieties based on ignorance regarding HIV and AIDS. They claimed that by listening to the visitor in their classroom they had acquired a new understanding and respect for people affected by HIV and AIDS, and had lost their fears of contact with people infected with HIV and people with AIDS.

332. Direct contact with people affected by HIV and AIDS is, in many respects, the best way of educating others about the importance of non-discrimination and respect for human rights and dignity. To take but one example, a taxi driver reported that, in the process of talking with a passenger - who was a homosexual with AIDS - he had developed tolerance for homosexuals, compassion for people with AIDS, and, in particular, respect for people with AIDS who were willing to talk about their experiences so that others might learn from them.

333. In this connection, the solidarity and friendship which has sometimes been expressed by neighbourhoods towards a member of the local community who is known to be infected with HIV or to have AIDS have often been exemplary models of respect for human rights and dignity.

334. In one case, a young boy who was infected with HIV was victimized and eventually driven out of his neighbourhood. The new area to which his family moved was entirely different: his local community provided a supportive environment in which the boy and his family thrived.

335. This proved to be advantageous to all the people concerned. The boy began to enjoy his life again, taking part in school activities and developing new friendships. His family benefited too, as the strain of the previous experiences of discrimination and hostility was lifted. The neighbourhood, and in particular the boy's classmates, developed a new understanding of the nature of HIV and AIDS and were better able to cope with the pandemic as it affected their lives. The young boy was later invited to speak to the Presidential Commission on AIDS, where his informative and moving presentation inspired a standing ovation and helped to shape public opinion more widely.

IV. PRELIMINARY CONCLUSIONS AND RECOMMENDATIONS

336. Discrimination relating to HIV and AIDS is neither acceptable according to international human rights law, nor is it helpful to the promotion of public health. On the contrary, discrimination represents a violation of human rights, and harms public health by driving AIDS "underground", thus reducing access to counselling to those people who may be most in need of it.

337. Thus, a primary role of AIDS programmes needs to be overcoming the fear, ignorance and prejudice which lead to social rejection and stigmatization of people affected by HIV and AIDS.

338. There is a consensus that the most effective AIDS education programmes are those which aim to inform, rather than to instil fear. It is also recognized that it is important that AIDS information and education should be aimed at developing a supportive environment rather than encouraging prejudice or stigmatization through negative images and messages about certain groups in society.

339. Experience of AIDS programmes around the world, as well as the lessons to be learnt from the control of other sexually transmitted diseases, has led to the recognition that projects which seek the voluntary cooperation of target populations and protect the confidentiality of infected people are more successful than coercive policies.

340. The importance of avoiding HIV- and AIDS-related discrimination has led to debate about the utility of introducing laws to prohibit discrimination against infected people in the context of employment, education, housing, access to health care and so forth. One view is that national anti-discriminatory laws should be introduced immediately in order to provide the framework for the protection of the rights of infected people. Another view is that legislation would be less effective than educational campaigns to inform the public about the restricted means of HIV transmission and promoting tolerance and compassion rather than social rejection.

341. Governments which have not already done so might wish to consider the potential effectiveness of such laws in the legal and social setting of their country. As a starting point, consideration could be given by those States not already party to relevant human rights texts to adopting those international instruments, and to reviewing national laws with a view to strengthening the protection of human rights generally.

342. Where anti-discriminatory laws have been adopted, experience suggests that they provide an effective framework for persuading employers and others to avoid discrimination in the workplace and in other contexts. Whilst some complainants have entered into litigation, the time this takes may not be appropriate for someone with a terminal illness, and the stress it could impose might weaken the body's ability to fight infection. Thus greater emphasis is sometimes laid on using the law as a tool for education, rather than as a cause for litigation.

343. Law alone cannot prevent discrimination. This can only be achieved through public education about the limited means of HIV transmission, and the promotion of tolerance and compassion. Thus, as experience has shown, information and education programmes can and do play a vital role by including emphasis on the need to avoid stigmatization and discrimination.

344. In spite of this, there are numerous cases of people affected by HIV and AIDS being discriminated against in their places of work, their homes, in prisons, in hospitals, and in a wide variety of other social contexts.

345. Further consideration is therefore needed of the different means available for preventing discrimination and promoting a supportive environment for all people who are affected by the pandemic. This will have to be examined in the light of different socio-cultural contexts which exist around the world.

346. There is still a need to survey the full extent to which discrimination occurs, and to consider the many different contexts in which it occurs. It is clear, however, from the foregoing analysis, that discrimination relating to the pandemic affects not only those people who are infected with HIV and people with AIDS, but also people who are assumed to be infected on the grounds of their race, nationality, sexual orientation, occupation or lifestyle.

347. Observance of international human rights standards in the context of HIV and AIDS is not only legally required, but pragmatically essential for the prevention and control of AIDS, and a moral imperative of humanity.

348. On the basis of this progress report, the Special Rapporteur puts forward the following recommendations for consideration by the Sub-Commission on Prevention of Discrimination and Protection of Minorities.

1. The study proposed by the Sub-Commission in its resolution 1989/17 should be broadened in scope, from "Discrimination against HIV-infected people or people with AIDS" to "Discrimination in the context of HIV and AIDS".

2. Those responsible for the development of AIDS policies should be educated in applicable human rights laws and standards.

3. The widest possible publicity should be given to facts about AIDS in order to refute scientifically groundless beliefs such as that which holds that the disease only affects members of certain groups of society, as such beliefs have detrimental consequences for particular racial, national, occupational and sexually oriented groups.

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